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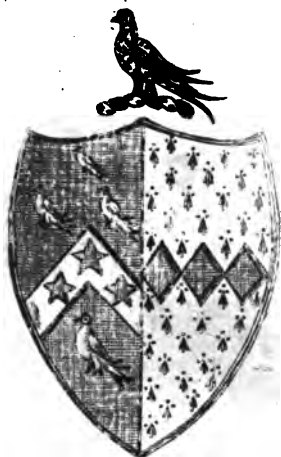
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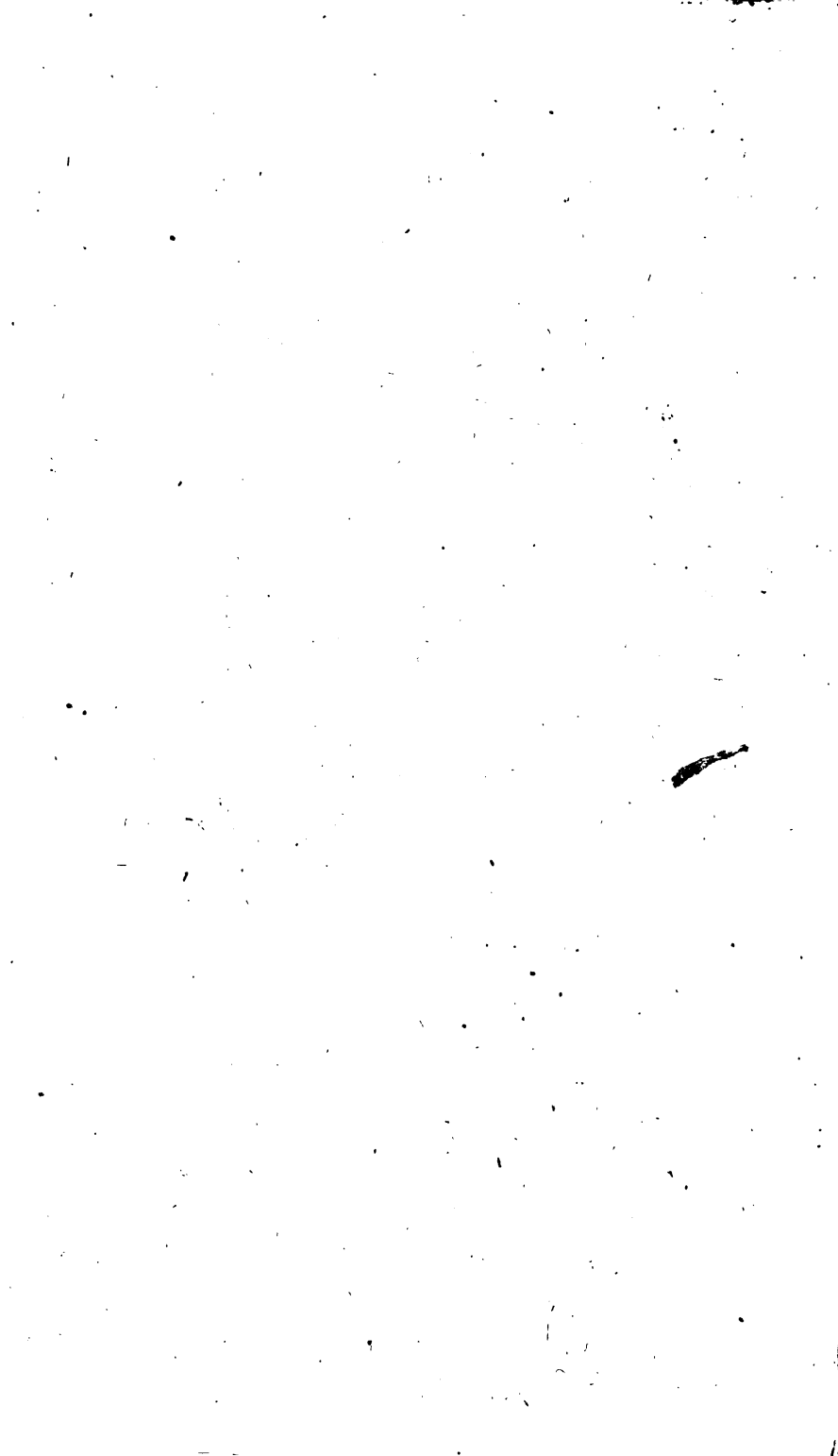
The Honible Edward Monckton
Sunnesford Hall County of Stafford.

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KAY-DEL-SULP. 1788

M^R BRODIE

AN
ACCOUNT OF THE TRIAL

OF *E. Monckton*
WILLIAM BRODIE AND GEORGE SMITH,

Before the High Court of Justiciary,

On the 27th and 28th days of August, 1788;
FOR BREAKING INTO, AND ROBBING,

THE
GENERAL EXCISE OFFICE OF SCOTLAND,

On the 5th day of March last.

ILLUSTRATED WITH NOTES AND ANECDOTES;
AND THE PORTRAITS OF BRODIE AND SMITH.

TO WHICH IS ADDED,

A N A P P E N D I X,

Containing several Curious Papers relative to the Trial;
and the Persons Tried.

BY WILLIAM CREECH,
ONE OF THE JURY.

Read this, and tremble! ye who 'scape the Laws. POPE.

SECOND EDITION.

EDINBURGH:

PRINTED BY AND FOR THE AUTHOR;

AND SOLD IN LONDON BY

T. CADELL IN THE STRAND.

M,DCC,LXXXVIII.

(1788)



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DIRECTIONS to the BINDER.

Place Mr Brodie's Portrait facing the title page;—
and Smith's facing page 226, immediately before the
Appendix.

E R R A T A.

At the beginning of the last paragraph of page 190,
read,—"Mr Clerk then proceeded."—*With regard, &c.*

INTRODUCTION.

IT will readily be allowed, that few Trials more remarkable than the following have ever happened, if we consider the character and situation of the principal person tried,—the nature of the crime,—and the ingenuity and novelty of the means by which it was perpetrated

An instance of a citizen, not only in a comfortable, but in a wealthy situation, and who had frequently held respectable public stations in this metropolis, brought to trial for a crime of so dangerous and atrocious a nature, which only the lowest and most abject could have been supposed to commit, is not to be found in the criminal history of this country.—The crime of the daring highwayman is venial, when compared with that of the insidious plunderer, under sanction of character.

The crime of robbery, no doubt, is but too frequent ;—but it is generally committed either by violence and force, where personal danger is incurred,—or it is discernible by evident traces of fraudulent design and cunning.

It has, however, been reserved for the present day to contrive a method of robbery that should evade all suspicion, and even baffle every possibility of detection, unless by the information of an accomplice.—An individual unconnected, and possessed of the art, might have remained in security, without the smallest suspicion of guilt, for a long period.

That people's property should be abstracted, as if by enchantment, and that, too, effected by a wealthy person, living in the bosom of society, enjoying credit and respect, it is believed the Annals of Newgate, that

that rich record of depravity, cannot afford an example.

This Trial, and the circumstances connected with it, open a scene of the deepest guilt and turpitude; and of the most astonishing nature that, perhaps, was ever exhibited to mankind. It fortunately has been the means of breaking the most dangerous combination of men that ever leagued together against society. This truth struck the Lord Justice Clerk so forcibly on the trial, that, when he came to discharge the Jury from their duty, he said, " Their COUNTRY would thank them for the verdict they had that day returned."

Will it be believed, that one of the unfortunate persons, an account of whose Trial is contained in the following sheets, not many months ago, while the secret depredations were going on that so much alarmed this country, and while fresh amazement appeared daily in every countenance,

nance, sat as a Juryman, to judge of the crimes of others, in that very Court where he himself received sentence of DEATH *!

Video meliora, proboque, deteriora sequor.

What a serious and awful lesson does this Trial afford to the bulk of mankind, of humility, and circumspection in conduct ! Where will they meet with a more striking example, *that the heart is deceitful and desperately wicked !*—or a more powerful admonition to the self-examination of the motives of action !—The neglect of early education, inattention to the acquirement of good principles and habits, and the associating with bad companions, often lead to fatal consequences, even with many
whose

* On the 4th and 5th of February last, Mr Brodie served as a Juryman, in the Court of Justiciary, on the Trial of Allan M'Farlane, officer of Excise, and Richard Firmin, soldier in the 39th regiment of foot.

whose situation and opportunities, if rightly improved, might have led to respectability, to honour, and to opulence.

The first step to vice prepares the mind for further accessions of guilt. The restraints of conscience once overcome, give less resistance in every future breach of moral duty; and crime often succeeds crime, till the sword of justice falls on the guilty head.

Of all the vices of dissipated life, none, perhaps, is more fascinating, or more destructive to self-repose, to virtue, and to industry, than *gaming*.

The affluent, whose minds have not been trained to sober thinking, or habituated to useful exertion, naturally fly to this vice to escape the languor of inaction: But the temporary amusement which it affords, by exciting hopes and fears in the listless mind, generally leads to an incapacity for any
other

other employment ;—nay often to the most pungent distress ;—and not unfrequently to self-destruction !

To those, whose life has been destined to attention and industry, this vice is of all others the most pernicious.—He who builds his hopes of wealth on his good fortune at play, will seldom plod in the road of honest industry and duty. Why should he toil in business to obtain shillings and pence, when he may gain pounds in pleasurable amusement ?

Such is his delusion, and it is thus his mind becomes unfitted for his station. Unsuccessful play plunges him into distress, —impells him to dishonesty ;—and a mind harassed with inquietude seeks relief in means the most base and dishonourable.

But even to many who do not carry gaming to a dishonourable length, it is yet extremely hurtful. What was at first embraced

braced merely as a pastime, frequently becomes a habit, which unfits the mind for every worthy and manly exertion. Life is passed away in insignificance and frivolous amusement ; the duties of the station allotted by Providence are neglected ; and the last stage of time is often spent in regret for its loss.

It is thus that the mind, which, like the placid summer sea, might have reflected the bright serenity of Heaven, on the retrospect of such a life, is frequently found to resemble the ocean, tossed by the dark storms of December.

Such are the effects of this unhappy propensity, which is now become too prevalent among all ranks ;—and such they will appear strongly and fatally exemplified in the following narrative.

“ See all our nobles *gaming* to be slaves,

“ See all our fools aspiring to be knaves.”

As

As the evidence in Trials before the High Court of Justiciary is not now taken down in writing, to prevent the oppressive length which our forms render unavoidable, a faithful account of every circumstance in this singular and interesting Trial is given, from very ample notes taken during the whole proceedings.—The full forms are given, for the information of those who may not be acquainted with the procedure of the Criminal Court.

It has not been so much an object with the writer of the account of this Trial to dwell, at great length, on the contests of the learned Counsel on points of law, (although he hopes he has given these sufficiently full), as to give the train of facts, and the evidence, with perspicuity, and with that candour which becomes a Jurymen intent on the import of the evidence on his own mind.

The

The Trial commenced precisely at Nine o'clock in the morning of Wednesday the 27th of August, and the Jury were not inclosed till near Six in the morning of the day following. The fatigue of the Trial, and the short time that was taken to draw up this account, (being published on the seventh day from the rising of the Court,) was pleaded as an apology for any trivial inaccuracies or omissions in the former edition.

A second edition having been so soon demanded, the utmost attention possible has been given to revising and correcting the whole; and several curious circumstances have been added *.

The paragraphs formerly omitted having no immediate relation to the Trial, were

* The publication of this edition was delayed some days, in order to give an account of the behaviour of the criminals at their execution.

not led in evidence before the jury, from the indulgence of the Lord Advocate to the prisoner Brodie and his friends. On the conviction for a single act of robbery, hopes of pardon, or an alteration of the sentence were entertained. But the unhappy criminals being now no more, it has been thought proper to give the deblatations of Smith at full length. Where atrocity is flagrant, it no doubt ought to be exposed for the benefit of society; and the public have a right to be satisfied with regard to crimes against themselves. Every circumstance in the parts formerly omitted were circulated, but often imperfectly told and exaggerated; and many stories have even been printed concerning the unfortunate men, which had no foundation in truth. What only has been properly authenticated is here given.

The paper, entitled in the Indictment, "State of my Affairs," &c. although laid on the table for the inspection of the Jury, yet,

yet, being of a private nature, and not necessarily connected with the crime charged, the Jury had too much delicacy to look into; and it is hoped the same motive will be a sufficient apology for not laying it before the Public.

Where respectable names are mentioned in the declarations or letters, it is not to be doubted that every liberal mind will approve of their being left blank, although it is surely no disgrace to the best of men, that some in their line of relationship should have wandered wide from the paths of rectitude and virtue.—Esteem is founded on personal qualities alone—and virtue is not hereditary.

In the course of the account of this Trial, notes are added in some places at the bottom of the pages, to elucidate and connect the evidence. Some historical circumstances and anecdotes are also given, illustrative of character, or which were deemed singularly curious *.

curious *.—An Appendix is also given, containing much curious information connected with the Trial, and the persons tried.

To this edition, portraits of Brodie and Smith are given, by Kay, *from memory*, and by those who knew them best, are reckoned most exact likenesses. Although not highly finished in point of engraving, they are a wonderful proof of the force of untutored genius †.

Edinburgh,
Oct. 3. 1788.

* Brodie told Mr Williamson that he had mistaken him in some particulars in the story related in the note page 68, respecting the man who had made a forgery on the Bank of Scotland.

† John Kay forced himself on the attention of the public in Edinburgh, by the efforts of his genius; which, although at first rude, showed that if his talents had been cultivated, he might have risen to excellence. His history is curious and worth recording. He was born at a small house on the banks of the South Esk, about a quarter of a mile from Dalkieth. The house is there known by the name of *Gibraltar*. His father was a journeyman

journeyman mason, who died when his son was seven years old. His mother, in indigent circumstances, had it not in her power to give him education, and at the age of 13 put him apprentice to George Heriot barber in the village of Dalkieth.

When a very young boy he discovered the bent of his genius by drawing figures with pieces of burnt sticks. That dawning of genius, unhappily for him however, was not marked by any kind patron; and in his lot he enjoyed no means of cultivating his talents. The shaving of beards, and the dressing of country wigs for Sunday, he did not much relish, and left his apprenticeship. His mother beat him, and sent him back to his master, with whom he served out his six years. He had then nothing to depend upon but his diligence in his profession. In the course of his vocation he fell in with the late Mr Nisbet of Dirleton, who took a liking to him from having discovered his talents, and kept Kay much about him, which, although flattering, yet lost him his other customers.

In this situation he had some leisure time, and the bent of his genius again showed itself.

“ Naturam expelles furca, tamen usque recurret.”

He drew several single figures and groupes, which attracted much attention, all of them having been done from transient observation. The likenesses he struck
 upon

upon many occasions, and often from a single glance, astonished the public. Without a lesson in drawing, etching, or engraving, he has, since Mr Nisbet's death a few years since, taught himself all these arts. The sale of his etchings, which are now above a hundred, enable him to prosecute his favourite propensity; and he has lately begun to miniature painting, in which, with study, he must excel, for the likenesses he makes, from a single view, or from memory, are altogether astonishing. He is now a man above 40 with a wife and family.

TRIAL

THE
T R I A L
OF
WILLIAM BRODIE,
AND
GEORGE SMITH.

Read this, and tremble! ye who 'scape the Laws. Fore.

THE Prisoners, WILLIAM BRODIE,
and GEORGE SMITH, were brought
from the Prison into Court before Nine
o'Clock in the morning of August 27.
1788. They were conveyed, upon their
request, in chairs, but each having a cen-
tinel of the City Guard on the right and
A left,

left, with naked bayonets, and a sergeant's guard behind, with muskets and fixed bayonets. A party of the 7th regiment lined the way to Court, to keep off the croud. Mr Brodie was clean, and well dressed in a new dark blue coat, and a fashionable waistcoat, black fatten breeches, and white silk stockings, and his hair full dressed. Smith was meanly dressed. The demeanour of the first was easy and confident ;—that of the latter timid and dejected.

The Judges, in their justiciary robes, preceded by a Macer bearing the justiciary mace, soon after took their places on the bench, in the following order,—viz.

LORD JUSTICE CLERK,

LORD HAILES, LORD STONEFIELD,

LORD ESKGROVE, LORD SWINTON.

Silence being proclaimed, the Clerk of Court ordered a Macer to call May Campbell,
bell,

bell, Esq; his Majesty's Advocate, for his Majesty's interest, against William Brodie, some time wright and cabinet-maker in Edinburgh, and George Smith, some time grocer there ;—which being done with the usual forms and solemnities, the Lord Justice Clerk desired the Prisoners to attend to the Indictment then to be read.

Mr Norris, Depute Clerk of Court, then read aloud the Indictment, as follows :

“ WILLIAM BRODIE, some time wright and cabinet-maker in Edinburgh, and GEORGE SMITH, some time grocer there, both prisoners in the tolbooth of Edinburgh, You are indicted and accused at the instance of ILAY CAMPBELL, Esq; his Majesty's Advocate, for his Majesty's interest: THAT ALBEIT, by the laws of this, and of every other well governed realm, THEFT, more especially when attended with house-breaking, and when committed by breaking into a house used
or

or kept as an Excise Office, or other public office, under cloud of night, and from thence abstracting and stealing money, is a crime of an heinous nature, and severely punishable : YET TRUE IT IS, AND OF VERITY, That You, the said William Brodie, and George Smith, are both, and each, or one or other of You, guilty actors, or art and part, of the said crime, aggravated as aforesaid : IN SO FAR AS, upon the night of the 5th day of March last, in this present year of our Lord 1788, or upon one or other of the days or nights of that month, or of February immediately preceding, or of April immediately following, You, the said William Brodie, and George Smith, did, by means of false keys, or other instruments, wickedly and feloniously break into *the* * house in which the General Excise Office for
Scot-

* This, and the other parts of the Indictment printed in Italics, were the subject of objection by the Counsel for the prisoner, William Brodie.

Scotland was then kept, in Chessell's buildings, on the south side of the High-street of Canongate of Edinburgh, within the royalty or liberties of the city of Edinburgh, and county of Edinburgh, and did thence feloniously abstract and steal money, to the amount of sixteen pounds Sterling, or thereby, consisting partly of Bank-notes, and partly of silver and halfpence. And You, the said George Smith, having been afterwards apprehended, and brought before Archibald Cockburn, Esq; sheriff-depute of the county of Edinburgh, did, in his presence, emit three several declarations; the first of date the 8th day of March, the second of date the 10th day of March, and the third of date the 19th day of March, all in this present year of our Lord 1788: And having afterwards been brought before John Stewart, Esq; sheriff-substitute of the said county, You did, in his presence, emit a fourth declaration, of date the 17th day of July, likewise in this present year 1788: The first of which declarations was
signed

signed by the said Archibald Cockburn, the second and third by You, the said George Smith, and the said Archibald Cockburn, and the fourth by You, the said George Smith, and the said John Stewart. AND FURTHER, You, the said William Brodie, having, in the month of March last, when the said George Smith was committed to prison, left Edinburgh, and fled from this country; and having afterwards been brought back, and taken into custody, did, upon the 17th day of July, in this present year 1788, in presence of the said Archibald Cockburn, Esq; emit a declaration, which was signed by You, the said William Brodie, and the said Archibald Cockburn; the whole of which declarations, together with a letter written by You the said William Brodie, and signed *John Dixon*, dated at Flushing, Tuesday, 8th April 1788, twelve o'clock forenoon, and addressed to Mr Matthew Sheriff upholsterer, Edinburgh; another letter, or two letters, on one sheet of paper, written by You the said William Brodie,

Brodie, and signed with your initials, dated Thursday, 10th April 1788, and addressed to Mr Michael Henderson Grass-market stabler Edinburgh ; an unsigned scroll, or copy of a letter, in the hand-writing of You the said William Brodie, marked No. 1. without date or address ; another unsigned scroll, or copy of a letter, in the hand-writing of You, the said William Brodie, marked No. 2. without date or address ; an account, or state, in the hand writing of You, the said William Brodie, entitled, ' A state of my affairs, as near as I can ' make out at present from memory, having no other assistance ; ' a letter, dated London, 1st May 1788, signed *Lee, Strachan, and Co.* and addressed to Mess. Em^l. Walker and Co. merchants, Philadelphia ; a *gold watch, with a chain, seal, and key ; a chest, or trunk, containing various articles ; a five pound bank-note, an iron coulter of a plough, two iron wedges, an iron crow, a pair of curling irons, or toupee tongs, a spur, a dark lanthorn, a pair of* pistols,

pistols, several false keys and pick-locks, and two spring-saws, are all to be used in evidence against You the said William Brodie and George Smith ; and, for that purpose, will be lodged in the hands of the clerk of the High Court of Justiciary, before which You are to be tried, in order that You may have an opportunity of seeing the same : AT LEAST, time and place foresaid, the said house in which the General Excise Office for Scotland was then kept as aforesaid, was feloniously broke and entered into, and a sum of money feloniously and theftuously taken and stolen therefrom as aforesaid ; and You the said William Brodie, and George Smith, above complained upon, are both, and each, or one or other of You, guilty thereof, actor or actors, or art and part. ALL WHICH, or part thereof, being found proven by the verdict of an assize, before the Lord Justice General, Lord Justice Clerk, and Lords Commissioners of Justiciary, You, the said William Brodie, and George Smith, OUGHT
to

to be punished with the pains of law, to deter others from committing the like crimes in all time coming."

(Signed) ILAY CAMPBELL.

The Indictment being read, the Lord Justice Clerk then addressed the prisoners severally as follows :

William Brodie, You have heard the Indictment raised against you by his Majesty's Advocate—Are you Guilty of the crime there charged, or not Guilty?—The prisoner, William Brodie, standing up, answered, *My Lord, I am not Guilty.*

George Smith, You have heard the Indictment raised against you by his Majesty's Advocate—Are you Guilty of the crime there charged, or Not Guilty?—The prisoner, George Smith, also standing up, answered, *Not Guilty, my Lord.*

The *Lord Justice Clerk* then asked the Counsel for the Prisoner, if they had any objection why the said Indictment should not be remitted to the knowledge of an assize ?

Mr Charles Hay, for William Brodie, said, that he would not consume the time of the Court in disputing upon the relevancy of the Indictment, but craved a proof of all facts and circumstances tending to exculpate or alleviate ; and would rest the cause upon the issue.

Mr Solicitor Dundas, Counsel for the prosecutor, here desired to know the nature and tendency of the exculpatory evidence proposed to be adduced, in order that, in the course of leading the proof upon the part of the prosecutor, they might be prepared to meet it.

The COURT expressed their opinion, that this was but a fair request, and consistent with practice.

The

The Honourable *Henry Erskine*, *Dean of Faculty*, another of the Counsel for Mr. Brodie, upon this stated, that they meant to prove an *alibi* at the time the robbery libelled was said to have been committed.

Mr John Clerk, as Counsel for Smith, rested his defence on a simple denial of the charge, having no exculpatory proof to offer.

The Lords then pronounced the usual interlocutor, “ finding the Indictment relevant to infer the pains of law ; and remitted the same to the knowledge of an assize ; and allowed the exculpatory proof “ craved.”

The Clerk of Court then gave to the Lord Justice Clerk the following list of Forty-five Jurymen, duly summoned to attend this Trial.

LIST

LIST OF ASSIZE.

- Andrew Bonar banker in Edinburgh
Alexander Houston banker there
Robert Forrester banker there
Robert Allan banker there
5 Henry Jamieson banker there
John Hay banker there
William Creech bookseller there
James Carfrae merchant there
William Gillespie merchant there
10 William Simpson banker there
George Kinnear banker there
John Black merchant there
Francis Blair merchant there
Elphinstone Balfour bookseller there
15 Peter Forrester merchant there
John Thomson insurance-broker there
Thomas Elder merchant there
Edward Innes confectioner there
John Balfour merchant there
20 William Fettes merchant there
John Milne founder there

Dunbar

- Dunbar Pringle tanner in Edinburgh
Peter Robertson goldsmith there
Thomas Campbell merchant there
25 William Turnbull merchant there
Alexander Brown merchant there
Charles Cowan merchant there
David Paterfon insurance-broker there
Francis Sharp merchant there
30 James Donaldson printer there
John Hutton stationer there
John Balfour papermaker there
Robert Young upholsterer there
John Learmonth, junior, tanner there
35 Thomas Cleghorn coachmaker there
Thomas Hutcheson merchant there
James Craig corn-merchant there
Alexander Bruce merchant there
Benjamin Yule baker there
40 William Smellie printer there
Orlando Hart shoemaker there
James Ranken merchant there
William Young baker there
William Brown grocer there
45 Alexander Weir painter there

Out of the above Forty-five Jurymen, the following Fifteen were called upon; and the Prisoners being asked, If they had any objections why they should not pass upon this affize? and no objections being made, they were sworn in by the following oath, five at a time.

O A T H.

“ You swear by Almighty God, and as
“ you shall answer to God at the Great
“ Day of Judgment, that you will truth
“ say, and no truth conceal, so far as you
“ are to pass upon this Affize.”

1. Robert Forrester banker

2. Robert Allan banker

3. Henry Jamieson banker

4. John Hay banker

5. William Creech bookseller

6. James Carfrae merchant

7. George Kinnear banker

8. William Fettes merchant

9. John

9. John Milne founder
10. Dunbar Pringle tanner
11. Thomas Campbell merchant
12. Francis Sharp merchant
13. James Donaldson printer
14. John Hutton stationer
15. Thomas Cleghorn coachmaker

**LIST of WITNESSES to be ad-
duced in the Trial for the Profecutor.**

1. John Brown, *alias* Humphry Moore,
some time residing in Edinburgh, pre-
sent prisoner in the tolbooth of Ca-
nongate of Edinburgh.
2. Andrew Ainslie, some time shoemaker,
present prisoner in the tolbooth of Ca-
nongate of Edinburgh.
3. Mary *Hubbart*, or *Hubburt**, spouse of
the said George Smith.
4. Graham

* The mis-spelling of this name was made the sub-
ject of objection to the admission of her evidence.
See Witness 18. in the Trial.

4. Graham Campbell, some time servant to the said George Smith.
5. Alexander Thomson accountant of Excise in Edinburgh.
6. Peter M'Farlane, clerk in the office of the cashier of Excise there.
7. Adam Pearson assistant secretary of Excise in Edinburgh.
8. Janet Baxter, servant to the said Adam Pearson.
9. William M'Kay porter in the Canon-gate of Edinburgh.
10. John Duncan door-keeper to the Excise Office, Edinburgh.
11. Laurence Dundas house-keeper of the said Excise Office.
12. Margaret Black, late servant to the said Laurence Dundas.
13. Margaret Bain, late servant to the said Laurence Dundas.
14. James Bonar deputy-solicitor of Excise, Edinburgh.
15. Robert Smith, wright in Edinburgh, late foreman to the said William Brodie.

16. Isobel Gilmour, spouse of John Gilmour rope-maker in West Bow, Edinburgh.
17. Daniel M'Lean, waiter to William Drysdale innkeeper in the New Town of Edinburgh.
18. Patrick Taylor smith in Edinburgh.
19. Charles M'Leod apprentice to the said Patrick Taylor.
20. Jacobina Pearson, spouse of Hugh Macpherson shoemaker in Duddingston, near Edinburgh.
21. John Kinnear, servant to the Earl of Abercorn, at Duddingston.
22. Robert Tait, servant to the Earl of Abercorn there.
23. Isobel Wilson, spouse of Adam Robertson wright in Duddingston.
24. John Clerk, book-keeper to William Drysdale innkeeper in the New Town of Edinburgh.
25. David Robertson merchant in Edinburgh.

26. John Geddes tobacconist in Mid-Caledon, and county of Edinburgh.
27. Margaret Tweddle, *alias* Geddes; spouse to the said John Geddes.
28. James Laing writer in Edinburgh.
29. John M'Leish, clerk to Mr Hugh Buchanan city-chamberlain of Edinburgh.
30. George Williamson messenger at arms in Edinburgh.
31. William Middleton indweller in Edinburgh.
32. James Murray sheriff-officer in Edinburgh.
33. Alexander Williamson sheriff-officer there.
34. James Frazer sheriff-officer there.
35. Archibald Cockburn, Esq; sheriff-depute of the county of Edinburgh.
36. John Stewart sheriff-substitute of the said county.
37. William Scot procurator-fiscal of the county of Edinburgh.
38. William Augustus Withart, clerk to the said William Scot.
39. Joseph

39. Joseph Mack writer in the sheriff-clerk's office, Edinburgh.
40. Alexander Frazer grocer and change-keeper in the New Town, Edinburgh.
41. Laurence Blair, servant to Mr Charles Hope, advocate.
42. Thomas Longlands solicitor at law in London.

(Signed) ILAY CAMPBELL.

The Jury being impanelled, and furnished with pen, ink, and paper, and copies of the Indictment being laid before them, the Court ordered the Counsel to proceed to the evidence. But, before we give an account of the evidence, we shall here mention the Counsel for the Prosecutor and for the Prisoners.

Counsel for the Prosecutor.

Ilay Campbell, Esq; Lord Advocate,
Robert Dundas, Esq; Solicitor General,
William

William Tait, Esq; } Deput
James Wolfe Murray, Esq; } Advocates.
Mr Robert Dundas Clerk to the Signet,
Agent.

Counsel for the Prisoner William Brodie.

The Honourable Henry Erskine, Dean
of Faculty,

Alexander Wight, Esq;

Charles Hay, Esq;

Agents.—Mr Robert Donaldson Writer
to the Signet,

Mr Alexander Paterson Writer in Edin-
burgh.

Counsel for George Smith,

John Clerk, Esq;

Robert Hamilton, Esq;

Mr Aeneas Morrison, Agent.

Before the evidence was led, *Mr Wight*,
one of Mr Brodie's counsel, rose and ob-
jected

jected to the Indictment as faulty, in being so extremely vague, many of the articles libelled on being only generally named, and so imperfectly described, that it was impossible to identify them. He mentioned, in particular, that a gold watch, with a chain, seal, and key, was libelled on; but neither the maker's name, nor number of the watch, nor the figure on the seal, were specified, so as that it could be distinguished from any other gold watch with a chain, seal, and key. As another instance of this imperfect description, the libel mentioned a chest or trunk, containing various articles. There was no particular description of the chest or trunk, or of any of the articles it contained. It was not said, that it was a hair trunk, or the size or shape of it, or any other mark condescended upon, whereby it could be distinguished. That the Prosecutors themselves were so much misled by this want of description, that they had sent the trunk referred to, or meant to be referred to, in the libel, to the prison to Mr Brodie, and

and had lodged a wrong trunk with the Clerks of Court ; and that they did not discover this mistake till yesterday morning, when they applied for a warrant to get back the right trunk from Mr Brodie ; in consequence of which, it was recovered.

That, although he had thrown out this general objection, he did not mean to plead it to the effect of setting aside the libel altogether ; yet, when the Prosecutor attempted to apply his evidence to these articles, he reserved to himself the liberty of making special objections to each article, as it should be referred to.

The *Lord Advocate* answered, That these articles were only to be founded upon as circumstances of evidence ; and, in that view, it was not necessary to describe them more particularly than they were in this libel : That, if every nail of a trunk, or every trinket of a watch, or other articles, which it might be necessary to found upon
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in trials of this kind, were to be so particularly described as Mr Wight had contended for, it would swell indictments to a very inconvenient and unnecessary length: That, indeed, a mistake had happened with regard to the trunk, but it was discovered and rectified in proper time: That Mr Brodie could not say that he suffered in any shape by the trunk not being produced sooner, as it was all the time in his own possession; and, with regard to the watch, all the use he meant to make of it, was to identify some letters from Mr Brodie, which were sealed with the seal appended to it.

The *Dean of Faculty* replied, That the objection was of the deepest importance in point of law. The records of the Court afforded no instance of an Indictment so vague as the present: That many articles were produced not mentioned in the libel at all: That the very purpose of mentioning, and condescending upon the articles to
be

be used in evidence, was to identify these articles; and, without such a description as could identify them, the intention of the law was eluded; prisoners could not come prepared, as they could not foresee the use that was to be made of them; and articles might be changed after the prisoners had seen them, and satisfied themselves that they could establish nothing against them: That, if the loose manner in which this Indictment was laid, received the countenance of the Court, it might lead to a variety of consequences inconsistent with the security of individuals: That, if the *corpus delicti* was not particularly described, so as to prevent the possibility of doubt with regard to the identity of it, the dearest rights of mankind might be endangered, and at the mercy of corrupt men; and no one could say how fatal the consequences might be.

The *Lord Advocate* admitted the justice of what the Dean of Faculty had stated, if such an objection as the present was made

to the description of the *corpus delicti*: That, if the prisoners were charged with having stolen the watch, or trunk, mentioned in the Indictment, the description there given of them would not be sufficient; but, as they were not the *corpus delicti*, and only referred to as circumstances of evidence, he contended, that the description was sufficient; but, rather than detain the Court longer with an objection of this kind, he would give up the trunk altogether, as he did not suppose that he would stand in need of it; he, however, submitted the matter to the Court.

The *Lord Justice Clerk* then said, Your Lordships have heard the objection and answers on this point, What is your opinion?

Lord Hailes delivered his opinion, That he saw a very necessary and proper distinction between the description of the *corpus delicti*, and of an article that was only referred to as a circumstance of evidence: That some

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articles

articles in this Indictment were more vaguely stated than he had ever seen ; particularly where it mentioned a trunk containing *various articles* : That, if these various articles were to be used in evidence against the prisoners, he thought the objection to the description of them a good one ; but, if it was only the trunk itself that was meant to be founded upon, he thought the description of it sufficient.

Lord Esfgrove said, He thought that it would be hard to deny the prosecutor the benefit of the evidence of these articles ; it might be as well said by a prisoner, that the libel should condescend upon what every witness to be adduced against him was to say : That no decision of the Court, sustaining such an objection as the present, had been produced, although the books of adjournal had been referred to ; and he was persuaded, if carefully examined, they would afford many instances to the contrary : That he thought the description of
them

them sufficiently accurate : That no more was necessary, upon the part of the prosecutor, than such a description as was here given, when the articles were referred to only as circumstances of evidence, not as the *corpus delicti* ; and, therefore, was for repelling the objection.

Lord Stonefield and *Lord Swinton* were of the same opinion.

The *Lord Justice Clerk* thought that the objection was of importance, and would be a good one, if it referred to the *corpus delicti* ; but not in the present case : That the production of *articles* of evidence labelled on previous to trial, had been introduced by practice, not by any positive law, and proceeded from proper motives of candour and lenity upon the part of the prosecutor : That he saw no possible injury that the prisoners could suffer for want of a more particular description of some of the
articles

articles libelled on ; and was for repelling the objection.

The Court then unanimously pronounced an interlocutor repelling the objection.— But, before recording the same, the Dean of Faculty craved that he might be allowed to give in a minute, stating his objection in writing, that it might appear upon the record ; and likewise begged that it might be understood, both by the Court and the Counsel for the prosecution, that the objection should be held as repeated, whenever the articles, the description of which were objected against, should be referred to as evidence, which would save an unnecessary repetition of it ; which request the Court thought reasonable, and ordered accordingly.

The Court then proceeded to the evidence. The first witness called upon was
William

William Scot, Procurator-fiscal for the county of Edinburgh.

To save repetition, we shall here give the form of the oath which is administered to every witness examined before this high Court.

The witness being brought to the foot of the Clerk's table, the Court asks the prisoners, or their Counsel, if they have any objection to the witness. The Lord Justice Clerk, or the other Judges in rotation, ask the witness's name. The witness is then desired to hold up his (or her) right hand, and repeat the following oath:

"I swear by Almighty God, and as I
 " shall answer to God at the Great Day of
 " Judgment, I will tell the truth, the whole
 " truth, and nothing but the truth, as far
 " as I know, and it shall be asked of me."

The

The witness then takes down the right hand. The Judge asks the witness if he (or she) has been instructed what to say; or if any person has promised a reward or good deed for being a witness. The Judge then desires the witness to look at the prisoner, and asks if he (or she) has any malice or ill-will at the prisoner. All which interrogations being answered in the negative, the Counsel for the prosecutor proceeds to ask their questions.

WITNESS I.

William Scot, Procurator-fiscal, being shown the four declarations of Smith, as described in the libel, and also the declaration of Brodie—he identified the same: That they were all emitted in his presence freely and voluntarily, and that no compulsion or undue means was used to induce the prisoners to sign these declarations: That every thing declared before the Sheriff was taken down in writing: That, on the

the 10th of March last, he, as Procurator-fiscal, made an application to the Sheriff for a warrant to apprehend Brodie : That search was accordingly made for him ; but he was not to be found : That, in the course of that search, he learned that Mr Brodie was absconded ; and that he was gone for London : That the prisoner, Smith, was apprehended on Saturday the 8th of March, and was in prison at the time the search was made for Brodie.

WITNESS II.

Joseph Mack, writer in the Sheriff-clerk's Office, being sworn and examined as above, concurred with the preceding witness *in omnibus* ; with this addition, that these declarations are all in his hand-writing ; and that he wrote them to the dictation of the Sheriff. Being asked by the Counsel for the prisoners, If all that Smith said was taken down ? answered, That every thing material was : That, with regard to the robbery

robbery of *Bruce's shop*.—Here the Court stopped him, as that was not before them*.

WITNESS III.

Thomas Langlands, Esq; Solicitor at Law, London.—That, in the month of June last, he was employed by the Officers for the Crown for Scotland to institute a search for Mr Brodie; in consequence of which, he applied to the Secretary of State's Office, and gave them the information he had received from Scotland: That he likewise waited upon Sir Sampson Wright, and had different consultations with him upon the most proper means of conducting the said search: That, as the information received gave reason to suspect that Mr Brodie was at Flushing, Ostend, or some place in Holland, it was agreed upon to send a messenger immediately in search of him: That Mr Groves, from Sir Sampson Wright's office,

* As the particulars of this robbery are curious, they are given in the Appendix, No. 3.

office, was accordingly sent with proper instructions: That Mr Groves traced him to Ostend, and learned that he had been there on the 4th of June, his Majesty's birth-day; and from that he traced him to Amsterdam, where he was apprehended, identified, and committed to prison: That, upon proper application, he was delivered up, brought over, and carried to Sir Sampson Wright's office for examination: That the deponent was present at the said examination; and the prisoner, *Brodie*, at the bar, is the person that was so brought over and examined: That there were two trunks or chests, belonging to Mr Brodie, also brought over by Mr Groves, and lodged in Sir Sampson Wright's office, which were opened and examined in the office: That they contained sundry articles of clothes, &c. and, among other particulars, a bundle of papers. And being shown the different letters, scrolls, and state of his affairs, written by Mr Brodie, and libelled on, depones, That they are the same that were found in

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the said trunk, as he knows them, not only from some peculiar expressions in the said letters which he remembers, but also from his own initials, with which they were marked at the time. He was also shown the gold watch mentioned in the Indictment, and swore that it was the same found in the said trunk, as he took the number and maker's name.—Upon cross examination by the Dean of Faculty, said, he had no other means of information that the articles in the said trunks or chests are the same which were brought from Ostend and Amsterdam, but the information of Sir Sampson Wright, and the letters accompanying the same, which he saw, and his being present when the trunks were opened.

WITNESS IV.

John Geddes tobacconist in Mid-Calder.
—That he was in London in the month of March last, and he and his wife took their passage in the Endeavour of Carron, Captain

tain Dent, bound for Leith, on a Saturday :
 That, on the Sunday, the vessel fell two or
 three miles down the river, and anchored
 at Blackwall : That, in the evening, the
 Captain went on shore to get hands, leav-
 ing the witness and his wife on board :
 That, betwixt the hours of 10 and 12,
 Messrs Hamilton and Pinkerton, two of the
 owners of the vessel, another gentleman he
 did not know, and a passenger that appear-
 ed sickly, came on board : That the passen-
 ger was dressed in a blue great coat, with
 a red collar, round wig, black vest, breeches,
 and boots : That the said three gentlemen
 that came on board with the passenger, after
 staying about a quarter of an hour, left the
 vessel : That the passenger was allotted a
 bed in the state-room near the fire, as he
 was sick : That next day they fell down
 the river, and the vessel got aground off
 Tilbury Point, where they lay 10 or 12
 days ; during which time the said passen-
 ger was twice on shore, once by himself,
 and another time with the master and wit-
 nefs ;

ness : That, for the first four or five days the said passenger was on board, he went by the appellation of the Gentleman ; but the witness having asked his name, he said it was *John Dixon*. And being asked, If he would know that person again ? said, He could. Was desired to look at the prisoners at the bar, and say if he knew any of them ; upon which he pointed out Mr Brodie to be the same person above mentioned that had called himself *John Dixon* : That, on getting out to sea, Mr Dixon delivered a letter to the Captain ; in consequence of which, he altered his course, and steered for Holland : That it was not by stress of weather that they altered their course, as the wind was south-west, and fair for Newcastle or Leith : That, during the voyage, Mr Dixon complained much of a sore throat : That they arrived at Flushing, where Mr Dixon hired a skiff for Ostend : That the witness went on shore, and received a packet of letters from Mr Dixon, to be delivered in Edinburgh :
That

That he did no business at Flushing ; and was of opinion, that the ship did not come there with that intention : That, after landing Mr Dixon, they sailed for Leith ; and, on his arrival there, was satisfied, from the accounts he had heard about Brodie, that it was him they had carried to Flushing, under the name of John Dixon : That next day the witness went to Mid-Calder ; and, about three weeks afterwards, was at Dalkeith, where he had occasion to see the newspapers, and the description of Brodie there given, confirmed him in the above suspicion. Upon this he opened the packet, which contained three letters ; one to Mr Michael Henderson, Grass Market ; one to Anne Grant ; and one to Mr Matthew Sheriff ; signed and dated as mentioned in the Indictment : That he read the inside of these letters ; and the letters libelled on being shown to him, he swore to their identity.

Cross examined by the Dean of Faculty.
 — The witness having said, that they did
 not

not go to Flushing upon business, was asked, If he did not purchase some goods there? answered, That he purchased two pieces of nankeen, and six silk handkerchiefs, with some spirits for sea-store, and half a pound of tobacco for his own use. And being more closely questioned, acknowledged, that his wife purchased three pieces of lace, some of which she sold after she came to Edinburgh. Being asked, Why he opened the letters? answered, That it was to do justice to his country, as he knew Dixon and Brodie to be the same person: That he kept these letters three weeks or a month in his possession: That the first person he showed them to was one Tweddle, his brother-in-law, who advised him to give them to the persons to whom they were directed: That he afterwards showed them to Mr Learmonth at Linlithgow, who gave him a letter to Mr Learmonth in Edinburgh: That he then carried them to Mr Erskine, the Deap of Faculty, but did
not

not recollect what he desired him to do with them.

Hear the Dean of Faculty informed the Court, in presence of the witness, That he had said he was not the proper person to apply to with these letters: That he had been consulted in Mr Brodie's affairs: That the witness himself knew best the directions that he had received from the person who committed these letters to his charge; and he left it to his own conscience to do with them what he pleased.

The witness then informed the Court, that he went home to Mid-calder *, and that the same evening, or early next morning,
Mr

* It is said, that Mr Learmonth very properly wrote immediately to the Sheriff-clerks-office; and the intelligence was from thence sent to the procurator-fiscal, who, at the time, was in the play-house: He immediately went out, and set off, with Mr Williamson the messenger, to Geddes's house, in Mid-Calder, 12 miles from Edinburgh, and brought him in on Sunday morning with the letters.

Mr Scot, procurator-fiscal, and Mr Williamson, messenger, called upon him, and he accompanied them to Edinburgh, and delivered the letters to the Sheriff.

WITNESS V.

Margaret Tweddle, spouse to the foregoing witness, corroborated her husband's evidence in every circumstance previous to their arrival in Leith ; identified the person of Mr Brodie, and said, That she saw him deliver the packet of letters to her husband, but that she never saw these letters afterwards.

WITNESS VI.

Robert Smith, some time foreman to Mr Brodie, remembered that he was sent for by his master on Sunday morning, the 9th of March, at 8 o'clock : That he thought it was to give him orders about some work, as he frequently sent for him for that purpose,

pose, especially when he was going to the country: That Mr Brodie asked him, If he had heard any thing of the men that were taken up the day before, meaning Smith and Ainslie? the witness answered, That he had not; but hoped that Mr Brodie was not concerned with them. To this Mr Brodie made no answer: That the reason he asked this question was, that he had often seen his master in their company, and knew him to be intimate with them: That Mr Brodie sent the witness for a waistcoat and a pair of breeches, saying, he was going out of town, but would be home in his own house before he went away; but the witness did not see him again till he was in prison: That Mr Brodie's house was searched on the Monday following, the 10th of March, by a warrant from the Sheriff. Being shown the letters, and state of affairs, libelled on, thought them very like Mr Brodie's hand-writing; but that the unsigned scrolls were not so like his master's hand-writing, as he had never seen

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him

him use, so many interlineations and blottings.

WITNESS VII.

James Laing assistant clerk in the council-chamber, being shown the different letters, scrolls, and state of affairs, libelled on, thought they were all, and each of them, of Mr Brodie's hand-writing, which he had often had occasion to see.

WITNESS VIII.

John M^r Liesh, clerk in the city chamberlain's office, said, he had had many opportunities of seeing Mr Brodie's hand-writing, and would know it; and having examined the said letters, scrolls, and state, authenticated the same to be Mr Brodie's writing. Cross examined, How he came to know Mr Brodie's writing so exactly? answered, From many accounts and receipts which he had in his custody belonging to the office.

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WITNESS IX.

John Duncan, door-keeper of the Excise, said, That he had been in that Office for 37 years: That he usually locked the outer-door about eight o'clock at night, and carried the key immediately thereafter to the housekeeper: That the night watchman came at ten o'clock, and went away at five in the morning: That, on Wednesday the 5th of March last, he locked the outer-door at about a quarter after eight o'clock in the evening, and carried the key to the housekeeper's, and delivered it to one of the maid-servants. Being cross questioned by the Counsel for Mr Brodie, said, that Mr Broughton's office, and the register of seizures, were kept in a small house opposite, and adjoining, but that there was no communication from the one to the other without going out to the open air; and the whole were in one court, inclosed by a parapet wall and iron rail: That the cashier's
room

room lay within the outer-door which he had locked, as above mentioned, and that it had a double door.

WITNESS X.

William Mackay, employed as watchman of the Excise, said, That, on Wednesday the 5th of March last, when he went to attend his duty, as usual, at 10 o'clock at night, he found the outer-door, the hall-door, and the doors of the cashier's room, all open. Upon this he went to Mr Dundas, the housekeeper's, and inquired who had been last in the office, as the doors were open? the servant answered, John Duncan, the last witness, had left it about a quarter after eight o'clock: That Mr Dundas's son having overheard this conversation, said, if the doors are open, there is something worse done: That, upon this, Mr and Mrs Dundas, their son, and the witness, went into the Office, and found all the desks and presses in the cashier's room

room opened : That there was lying in the cashier's room, the coulter of a plough, and two iron wedges ; and, in the hall, there was a spur, with part of the leather of it torn ; and being shown the coulter, wedges, and spur, libelled on, said they were the same so found : That Mr Dundas sent him for Mr Thomson, the assistant cashier of Excise ; and he went accordingly, and brought Mr Thomson along with him.

WITNESS XI.

Alexander Thomson assistant cashier of Excise in Edinburgh, said, That, on Wednesday the 5th of March last, he left the Office about eight o'clock at night : That he locked the door of the cashier's room before he went away, and took the key with him, and saw John Duncan, the door-keeper, in the hall as he came out : That he left L. 15 : 16 : 3 $\frac{1}{2}$ in his desk, and about L. 600 in a drawer below the desk : That, about ten o'clock the same evening, the
Office,

Office porter, or watchman, came and told him, that the Excise Office was broke into : That he went immediately there, and found Mr Pearson, the secretary, and Mr Dundas, in the Office : That, along with them, he examined the door of the cashier's room, and found that it had been prized open, and, as they supposed, with the coulter and wedges found there, which he identified to be the same libelled on : That a small press in this room had also been forced open, and some shillings and sixpences stolen from it, together with some stamps for receipts : That they had gotten the key of the witness's desk in a drawer in this press, with which they had opened the desk, and carried off the sum of money above mentioned therein contained, and a receipt for L. 7 : 18 : 2 : That the drawer below the desk where the L. 600 was deposited, cannot be opened without first opening the desk ; and the key-hole is concealed by a slip of wood over it, which might escape a slight observer : That, accordingly, it had remained

remained untouched, although the key of it lay in the desk. Being cross examined with regard to the situation of the Office, concurred in the description formerly given of it.

WITNESS XII.

Laurence Dundas house-keeper of the Excise Office, confirmed the several particulars deposed to by the preceding witnesses.

WITNESS XIII.

Janet Baxter.—That she was servant to Mr Pearson of the Excise at the time the Office was robbed; and, on that evening, being sent out on a message a little after eight o'clock, on her coming home again, she saw a man, with a whitish great coat and flouch hat, leaning over the rail, at the entry to the court: That she was afraid of him, and run away to the house,

as she thought him a light, or suspicious person.

WITNESS XIV.

James Bonar deputy-solicitor of Excise.
 —That he had occasion to call at the Excise Office on the night it was robbed, the 5th of March last, about half past eight o'clock: That he found the door on the latch; and, on opening it, a man rushed past him: That the witness stepped aside, to give way to him: That the man went out in seeming haste; and the witness took no suspicion, thinking it was some of the people belonging to the Office detained later than usual: That he appeared to be a square-built man, something taller than the witness*, and was dressed in black clothes, and,

* The reader is here requested to take notice, for the sake of explaining what is to follow, that the above witness entered the Office—a person rushed hastily past him—and that the witness, after two or three minutes stay, also came out.

and, he thought, a cocked hat : That the witness went up stairs to the solicitor's office, staid two or three minutes there, and then went away : That he saw no person either in the entry or court as he came out.

WITNESS XV.

Isobel Wilson, alehouse-keeper at Wester Duddingston, remembers, that, in the beginning of March last, two men came to her house, and drank a bottle of porter : That soon after she was examined in the Sheriff-clerk's office, in the presence of John Brown, (a succeeding witness), whom she pointed out there as one of these men.

WITNESS XVI.

John Kinnear, servant to the Earl of Abercorn, at Duddingston, remembered, That, in spring last, but could not condescend on the particular day, but remembered that there was then snow on the ground,

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that

that the coulter of a plough, with which he had been ploughing, was stolen : That he loosed from work that day between two and three o'clock, and was sent to Edinburgh : That, about four o'clock, he perceived two men upon the ploughed land, by the plough he had left : That they had with them a black dog * : That when he came to work next morning, he found the coulter of the plough had been taken away ; and being shown the coulter libelled on, swore that it was the same so stolen from his plough. And being cross-examined, how he came to know it, said, that it had
been

* On taking the precognition at the Sheriff-clerk's Chamber, a curious circumstance occurred respecting this black dog.—Smith, the prisoner, was under examination ; and the above witness, Kinnear, was also present. Kinnear had said to the Sheriff, that he was at such a distance that he would not know the men, but he would know the dog, having been at one time near him. Soon after, a dog was making a noise, and, scraping at the door, which being opened, the above witness said, there is the dog ; and it ran and fawned upon Smith.

been sent to a smith to be sharpened from the point to the hilt ; but that part of it had been left undone.

WITNESS XVII.

Graham Campbell, late servant to the prisoner George Smith, said, That she never heard of the Excise Office being broken into till she was apprehended with her mistress and Andrew Ainslie, and carried to prison : That she had seen the prisoner, Brodie, often in her master's house ; and had seen Ainslie and Brown often with him there ; and, on these occasions, they played at cards and dice, but chiefly at dice, when Mr Brodie was present : That one night, some few days before she was apprehended, the four were together in her master's house : That they met about the dusk of the evening, but what hour she could not say, as she was employed in the back cellar at work : She saw Brodie come in, and go up stairs to the room above : That Brodie had

had on black clothes, and old-fashioned ;
 That she never saw him so dressed before ;
 and that she said to her mistress, she won-
 dered how Mr Brodie came to have such
 old-fashioned clothes that night : That her
 master, Smith, was up stairs with Brown
 and Ainslie when Brodie came in, and
 joined them : That they staid together
 some time above stairs ; and they had a
 cold fowl and some *fresh herrings* to eat ;
 That she did not see them go out, being
 at work in the back cellar ; but, when she
 came into the kitchen, her mistress desired
 her to go up stairs to put the room in or-
 der, and wipe down the table, which she
 did ; and at that time they were all gone :
 That, about an hour after, they came all
 back again ; Ainslie came first, and after-
 wards Brown, asking for Ainslie : That the
 time they so met again altogether, was near
 ten o'clock ; and she observed that Mr
 Brodie's dress was changed at his return,
 and he had on light coloured clothes :
 That they sat in the kitchen, and supped
 there,

there, and staid about two hours: That Brodie went away first, and Brown and Ainslie followed soon after; and that she heard these two last express an intention, first of going to bed, and afterwards of going over to M'Lean to play cards: That her master did not go out again that night.

WITNESS XVIII.

Mary Hubbard or *Hubburt*, spouse to the prisoner George Smith, being then called, *Mr Clerk* objected to her examination, as she was disqualified on account of the relation in which she stood to his client, as any evidence which she could give, tending to criminate Mr Brodie, would have the same tendency against her husband, as they were accused of the same crime, and included in the same indictment.

The *Lord Advocate* answered, That he did not mean to put any questions to the witness that had the most remote tendency
to

to criminate her husband ; and, in order to convince the Court of the relevancy of what he proposed, he would submit the questions to the judgment of the Court.

Upon this point the Court agreed, that, by the criminal law of Scotland, a wife cannot be admitted a witness for or against her husband ; and that, in this case, if any improper question should be asked, it would not be allowed to be answered ; but they saw no reason why she might not be examined as to Brodie.

The Lord Advocate was then desired to read the questions he proposed to put, which were as follows : 1. Do you remember when the Excise Office was broke into ? 2. Was Brodie in your house that evening, and when did he come ? 3. Did you see him twice—and how was he dressed ?

On having heard the questions, the Court repelled the objection for the prisoner, and allowed them to be put.

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The witness, who had been removed during this debate, was then recalled * ; the Dean of Faculty asked her name, which she said was Mary *Hibut*. The Dean upon this said, there was no such person in the list of witnesses annexed to the indictment : That he indeed saw there a Mary *Hubbart* or *Hubburt*, but this was perfectly different from *Hibut*, and as different as *Friskin* from *Erskine*. Some difficulty having arisen about this name, the witness both *spelt* and *wrote* it, at the desire of the Court, altho' the Lord Advocate mentioned, that, in one of her declarations taken before the Sheriff, she said she could not *write*. He said, that, supposing a mistake had happened in spelling the name of this witness, yet it was such a one as the prosecutor could neither foresee

* This witness was much affected on coming into Court. On passing her husband, the prisoner at the bar, she looked at him with much seeming agitation. He stretched out his hands, and, in a loud whisper, intreated her not to answer a word to any question that should be put to her.

foresee nor prevent, as her name was spelt *Hubbart* in the declarations taken before the Sheriff; and one of these declarations she had signed Mary Smith; that these declarations were the rule which was followed, and is always followed in making up the list of witnesses; but the *designation* of this witness placed her identity beyond all doubt, as she was designed the wife of the prisoner George Smith, which would have been sufficient without any name whatever.

The *Dean of Faculty* answered, That this was as clear a misnomer as was possible to happen; nor could the designation given to her of being the wife of G. Smith supply the defect, as it was by no means impossible that Smith might have *two* wives, and her being named *Hubbart* in her declarations was of no consequence, as that was the operation of the clerk who wrote them, and she had no access to see or correct the mistake.

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The Court seemed inclined to sustain the objection, when

The *Lord Advocate* said, that the circumstances he meant to prove by the witness were so immaterial, that he would not trouble the Court farther with the matter, and she was withdrawn.

WITNESS XIX.

Daniel M'Lean, waiter to Mr Drysdale innkeeper New Town.—That he was in company with Brown and Ainslie on Wednesday night, the 5th of March: That one Price, and some other people, were in company, and they drunk some punch together in Frazer's cellar: That he thought this happened some time betwixt half past nine and eleven o'clock, but was not certain: That, on the Friday following, he received from Smith a five pound note to change, for a ticket in the mail-coach for Smith's wife to Newcastle: That he took out the ticket accordingly, and gave it to Smith, along with the change of his note.

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WITNESS XX.

Jabu Clerk, book-keeper to the said William Drysdale, remembered the last witness applying to him for change of a five pound note for a ticket in the mail-coach to Newcastle, and thought it was the night after the Excise was broke into: That Mr Drysdale changed the note, and, some days afterwards, gave it to the witness to carry to the Sheriff-clerk's-office, which he did.

WITNESS XXI.

David Robertson, hard-ware merchant in Edinburgh, remembered having sold, some months ago, a spring-saw to Mr Brodie, but could not say that either of the saws libelled on, and here shown to the witness, were the same he so sold, although they both bore his shop mark: That Mr Brodie said the use he was to make of it was to cut the natural spurs of game-cocks: That he
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has sold the same kind of saws to different persons, and knows they are sometimes used by cabinet-makers in the way of their business.

WITNESS XXII.

William Middleton, in the employment of the Sheriff's-office, said, that he was acquainted with John Brown, and remembered the robbing of the Excise Office : That Brown came to him on Friday night, the 7th of March, at 11 o'clock at night, and told him he had some discoveries to make respecting that robbery, and the other late shop-breakings : That the witness carried him to the Procurator-fiscal ; and that, after a conversation, they went with Brown to Salisbury Crag, where he pointed out, in a concealment, a great many false keys, which they brought to the Procurator-fiscal's house : That, the day thereafter, the witness was sent to England, along with Brown, in search of the goods stolen from the shop of
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Inglis and Horner, silk mercers, and Mr Frier, a partner of that house, accompanied them. Here the *Dean of Faculty* interrupted the witness, and said, that these were matters not before the Court, nor the subject of proof, and could not be admitted,—The witness then said, That, after his return from England, the witness was employed, on Sunday the 16th of March, to attend Smith, the prisoner, on a discovery, accompanied with Alexander Williamson, and James Murray, Sheriff-officers: That Smith, accordingly, conducted them to the foot of Warriston's Close *, when he took out of

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* A discrepancy here appears betwixt the above witness and a following witness, James Murray, who, with Middleton, accompanied the prisoner *Smith* to the place. Murray said, at the foot of Allan's Close, below the Royal Exchange; and Warriston's Close is above the Exchange, or west, the other east. Since the trial, we were at pains to have an explanation of this inconsistency, and went with Middleton to the spot. He conducted us down Warriston's Close; and, at the bottom of the steps at the foot of it, in
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a hole in a wall there an iron crow, a pair of curling irons, and a false key, which he said had been used in breaking open the Excise Office; and being shown these articles libelled on, swore to their being the same, and that Smith himself took them out of the hole: That, on the day following, he

the wall, immediately on the right hand, or to the east, and not three feet from the steps, he pointed out the hole where the iron crow and other instruments were found. He was asked, how he and Murray came to disagree? He said, it was true they went by Allan's Close, turned into Mary King's Close, and then west to the hole then pointed out. In short, the one witness, Murray, describes it by the road they took; the other, Middleton, by the real situation of the place. Middleton acknowledged that he was wrong in saying Smith put in his hand, and drew out the instruments. He was hand-cuffed, and could not stretch his arm; He only put his fingers to the mouth of the hole, to point it out, and Murray put in his arm, as he immediately recollected after he left the Court. Both Middleton and Murray agree that the hole is the same where they found the iron crow, &c, and it is directly at the foot of Warri-
ston's Close.

he was employed to search Brodie's house, and found there a dark lanthorn, part of it in one place, and part of it in another: That the lanthorn produced, and here shown to him, he believed to be the same. Being crossexamined, said, That, in the conversation he had with Brown, before their going to England, Brown did not mention Brodie's name, as being concerned in robbing the Excise Office, but said there was *a gentleman* concerned in it whom the witness knew, and *would little suspect*.

WITNESS XXIII.

Alexander Williamson sheriff-officer said, That, along with George Williamson and James Murray, he was employed to search Brodie's house on the 10th of March last: That, in the course of the said search, they found in a shade a pair of pistols, wrapped in a green cloth *, and buried underneath the

* The witness, at first, said the pistols were in a
black

the hearth, or where the fire-place was; and, being shown the pistols labelled on, said they were the same so found.

WITNESS XXIV.

James Murray sheriff-officer, concurred with the two preceding witnesses in every particular respecting the search of Brodie's house, and the articles there found: That Smith, the prisoner, pointed out the place, and found the pistols, by digging the earth with a piece of iron: That he accompanied Middleton and Smith when they went to search for the iron crow, key, &c. as mentioned: That they went by Allan's close, and the articles were found in a hole in a wall at the foot of the same, and were taken out of the hole by the witness, as Smith could not do it, being handcuffed:

black stocking: but, on being shown them wrapped in the green cloth, he corrected himself, and said, he was in a mistake in calling it a black stocking, being misled by seeing a black stocking on the table.

cuffed* : That Smith told the witness, that they were the same that had been used in breaking open the Excise Office; and the articles being shown to the witness, swore to their identity.

WITNESS XXV.

George Williamson messenger at arms, and King's messenger for Scotland.—That, on the 10th of March last, he was employed to search Brodie's house, and found several keys of a curious construction in a room off Brodie's shop : That in the wood yard, near about where a hearth or fire-place had been, a pair of pistols were found underground, which were discovered by Smith the prisoner, poking with an iron; and that the pistols on the table are the same so found : That they also found several picklocks in Mr Brodie's house, all which were lodged

* For explanation of this, see note on Middleton's evidence, p. 60.

lodged by him in the Sheriff-clerk's office :
 That, on the 11th of March, he was despatched in search of Mr Brodie : That the first traces he got of him was at Dunbar, and from that traced him all the way to London, and found that he had been set down at the foot of Old Street : That he waited upon Sir Sampson Wright, and also upon Mr Walker of the Adelphi : That in the course of his conversation with Mr Walker, he inquired after Mr Brodie, and said he had a letter for him, which he wished to deliver : That Mr Walker said he was not certain if it would be safe to introduce the witness to Mr Brodie.— Here the *Dean of Faculty* interrupted Mr Williamson, and objected to this historical evidence, and said, that, without meaning any reflection on the witness, whom he knew, and believed to be a very good man, and an active officer ; yet, in a question of this kind, hearsay evidence was not admissible * ; and the persons mentioned by
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* The further particulars of Mr Williamson's search

the witness ought to have been brought forward to speak for themselves.

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search for Mr Brodie are curious, and, having been favoured with them from Mr Williamson himself, we here subjoin them,

On Monday the 10th of March, Mr Williamson began his search at Mr Brodie's dwelling-house, out houses, &c. He searched several of Brodie's haunts in Edinburgh and Leith. He searched all the inclosed tombs in the Greyfriars Church-yard. The reason for this was, that, some years ago, Brodie assisted one Hay, accused of a capital crime, in making his escape from the tolbooth of Edinburgh, and concealed him eight or ten days in one of these tombs, till the hue and cry was over. Hay by this means got off, and has never since been heard of.—When it was known, on Wednesday, that Brodie had gone off to London on the Sunday morning of the 9th, Mr Williamson was despatched after him. At Dunbar, he learned that Brodie had passed there about four o'clock in the afternoon of Sunday, and traced him to Newcastle, where he took the Flying Mercury light coach for York and London. From the coachman who drove the coach into London, he learned, that a man, answering Brodie's description, had

The Lord Advocate replied, That what the witnesses knew himself, could not be called hearsay: That the bringing forward such a variety of witnesses was not only unnecessary and expensive, but inconsistent with the forms of criminal procedure in this country, which admitted of only one *federunt* for a trial; but he said it was so immaterial,

had been set down at the end of Old Street, Moorfields, and did not proceed to the Bull and Mouth Inn, where the coach stops. Some persons of Brodie's acquaintance were examined; and, from the declarations of some of them, there was reason to believe that Brodie had gone to the Continent. Mr Williamson went to Margate, Deal, and Dover, but got no intelligence of him.

On Mr Williamson's return to London, he learned from Sir Sampson Wright's people, that Brodie had been seen about Bedfordbury. Mr Williamson repaired to the billiard tables, hazard tables, cock-pit, tennis-court, &c. &c. As no house could be searched, without making oath to his being there, Mr Williamson left the management to Sir Sampson's people, and returned, after eighteen days search in London, to Edinburgh.

immaterial, that he would not insist on the further particulars of Mr Williamson's search in London. The *witness* then only added, that, after Mr Brodie was apprehended at Amsterdam, and brought to London, he was sent to take charge of him from Tothilfields Bridewell to Edinburgh *.

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* On the journey from London to Edinburgh, Mr Brodie was in good spirits, and told many things that had happened to him in Holland. He met with a Scots woman at Amsterdam, who asked him if he had been long from Scotland. She said, that there was one Brodie, a citizen of Edinburgh, accused of robbing the Excise Office, and a great reward was offered for apprehending him. She little knew who she was speaking to, said Mr Brodie.—At Amsterdam, he fell in with the man who had committed a forgery on the Bank of Scotland. He said, he was a very ingenious fellow. If he had not been apprehended, he would have been master of the process in a week.

Mr Brodie further told Mr Williamson, that the guide who had accompanied him and Mr Groves from Amsterdam to Helvoetsluys had a fine repeating

WITNESS XXVI.

Andrew Ainslie, some time shoemaker in Edinburgh.—To the examination of this witness the *Dean of Faculty* objected upon the different grounds: That he was a person who had himself been accused of the very crime charged in the Indictment: That he was to have been tried for it, and measures were taken for that purpose; but no sooner was Mr Brodie discovered, and brought to this country, than this witness was prevailed upon to accuse him as an accomplice in that crime. And upon this the Dean of Faculty said, his unfortunate client was substituted in the place of the witness, who was reduced to the alternative of either fixing the crime upon Mr Brodie, or being tried;

ing gold watch, which he Mr Brodie said he could easily have possessed himself of at the time the man was taking leave of him, as he was then in liquor; and said, he had often since regretted that he had allowed the fellow to go back with it.

tried, and perhaps hanged for it himself. Such being the circumstances under which the witness came forward, the Dean of Faculty contended that he was altogether inadmissible.

The *Lord Advocate* answered, that he had no doubt in his own mind that the witness was an accomplice to the crime charged against the prisoner, and was to have been tried for it, if he had not been admitted evidence: That the law had authorised the admission of the evidence of *focii criminis*, for a very obvious reason, and had left it to the public prosecutor to select and determine which of the accomplices ought to be admitted; there was therefore no doubt with regard to the *admissibility* of the witness: But with regard to his *credibility*, that remained in the minds of the Jury; and although he, the witness, could not now be under any temptation whatever to affix the crime upon another, as he himself was beyond the reach of being

ing affected by it, yet that he, as prosecutor, did not call upon the Gentlemen of the Jury to credit the evidence of this witness, farther than it should be corroborated by the other unexceptionable parts of the evidence.

The *Dean of Faculty* replied, that Ainslie was not in the situation of a common *socius criminis*: That he had all along denied the accession of Mr Brodie to the crime labelled; and it was not till Mr Brodie was on his way to, or arrived in Edinburgh, that the witness could be prevailed upon to say any thing whatever to criminate Mr Brodie: That very undue means had been practised upon him to become evidence in this cause; and he had nothing less at stake than his own life if he refused. The Dean said, That he was in condition to prove the undue means practised upon the witness, if the Court would allow him to bring forward the proof.

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The *Lord Advocate* answered, That the *Dean of Faculty* was misinformed in saying that the witness had never accused Brodie till after he was apprehended, and on his way to Edinburgh ; and referred to Ainslie's second declaration, emitted before the Sheriff on the 14th of March, a few day's after Brodie's elopement, as evidence of the contrary : That, with regard to the undue means alledged to have been practised upon Ainslie, to induce him to become evidence, he had never heard of it before, and could not believe it ; but had no objection to the witness being examined upon that point.

The Court, after reasoning upon the aforesaid debate, unanimously repelled the objection, upon the grounds, That, were accomplices to be disqualified from being witnesses, many very dangerous crimes would pass undiscovered, and unpunished : That the admitting them, therefore, was founded in reason and good sense, and consistent with the uniform practice of the Court :

Court : . That, although the law had fixed the *admissibility* of such evidence, it had wisely left the *credibility* of it to the jury ; and they might believe or reject it, according as their own consciences should dictate to them.

A minute of the above debate, and of the judgment of the Court thereon, being then ordered to be recorded, the witness was brought forward, and being sworn in common form, the Lord Justice Clerk informed him, that the former declarations emitted by him, respecting the crime libelled, were now all destroyed ; that nothing he had done, or could now say, respecting that matter, could ever militate against him in any shape, as he had been admitted as a witness ; and therefore conjured him to remember the solemn oath he had just taken, and to be recollected before he proceeded to answer the questions to be put to him. After this admonition,

Ainslie then said, That he was intimate with both the prisoners at the bar, and ma-

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med and distinguished them : That a plan had been framed between them, the witness, and John Brown, *alias* Humphry Moore, to rob the General Excise Office : That, some time previous to carrying the said plan into execution, the witness and Brown went out to Duddingston, and drank a bottle of porter in a public house there : That they had a black dog * with them belonging to the prisoner, Smith : That they stole a coultter, and two iron wedges, from a plough in a field near Duddingston, (described the field) : That they hid the coultter in Salisbury rocks, or crags : That, several nights previous to committing the robbery of the Excise, the witness watched at the office, to see what time the people left it ; and that he discovered the doors were generally shut about eight o'clock, and that no person attended till ten, when a guard, or watchman, came : That they had fixed on Wednesday, the 5th of March last, for committing the said robbery ; and,
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* Vide Note on Kinnear's evidence, page 49.

About the dusk of the evening, the witness and Brown went and brought the coulter of the plough from Salisbury Crags to Smith's House, in order to be used in forcing open the Excise Office doors : That, when they came to Smith's house, he (Smith) was at home ; and Brodie was expected to accompany them to the Excise Office : That he accordingly came ; and they met altogether in an upper room in Smith's house : That Mr Brodie was dressed in black clothes, (which he had often seen him in before), and a cocked hat, and whitish great coat : That he had a pistol, and was singing a *flash*, or highwayman's song : That it was settled that the witness should go first, and observe when the Excise people left the office : That he accordingly went there a little before eight o'clock, and waited till he saw the porter come out with a light, and lock the outer door : That, immediately after this, Smith came to the witness, and asked, If they were all gone ? and being answered, That they

they were, he (Smith) went forward, and opened the outer door with a key made for the purpose, and went in : That he has heard Smith say, that he made the said key : That, about five minutes after, Brodie came to the witness ; and being told that Smith was gone in, he (Brodie) went up again towards the street, and returned immediately in company with Brown : That Brown said he had been dogging the porter home : That the witness then handed the coultter to Brown through the rails ; and then Brodie and Brown went in together after Smith : That it was settled, before leaving Smith's house, that Brodie was to stand behind the outer door ; that Smith and Brown were to break into the Cashier's room ; and that the witness was to watch on the outside, and give the alarm, in case of danger : That the witness had no arms excepting a stick ; but the other three had each of them loaded pistols : That the signal of alarm agreed upon to be given by the witness, was a *single* whistle

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if one man appeared, that they might secure him, and *three* whistles if two or more appeared, which was to be the signal of retreat, which those within were to do by the back windows : That the witness got the ivory whistle with which he was to give the signal from Mr Brodie, before leaving Smith's house : That he took his station within the rail, and leaned down, so that no person, either going in, or coming out, could see him : That he had not been long there, when a man came running down the court ; and, before the witness had time to think what he should do, the man ran in to the Office : That, just as he went in, another man came running out at the door, and went up the court ; and, immediately thereafter, another came out * ; and the witness being afraid, from this circumstance, that they were discovered, and that these men had so come out were gone to give the alarm, he immediately gave three whistles,

* Vide Note upon the evidence of James Bonar, p. 48.

whistles, as the agreed signal of retreat, and then went off : That he was upon this watch altogether about half an hour : That the witness went down St John's Street, thinking to meet his companions coming out by the back way, having escaped from the windows ; but, not meeting with them, he went directly to Smith's house, and Mrs Smith told him that they were not yet come there ; upon which he went immediately back to the Excise Office by the street, saw the door open, and that all was quiet ; That he returned again to Smith's, and found Smith and Brown there : That they accused the witness of not giving the alarm as he promised, and informed him that Brodie had also deserted his post : That, soon after this, the witness and Brown went over to the New Town, and got Daniel M'Lean, Mr Drysdale's waiter, who went with them to one Frazer's : That they were there till about two o'clock in the morning, and there was one Price in company : That he the witness did not see Mr Brodie
that

that night again, after the robbery was committed * ; but he (Brodie) called upon the witness and Brown next morning at their room, and told them he had been with Smith, who had accused him of running away ; and, on Brown saying the same thing, he (Brodie) smiling, said, that he thought he had stood very true.

That, when the witness received the said whistle from Brodie in Smith's house, it was some time in the afternoon, and before they met altogether in the evening, and that Brodie was then dressed in light coloured clothes, and had afterwards changed them before they went to the Excise Office : That Smith, Brown, and the witness, had each of them a crape to disguise their faces, but Mr Brodie had none : That the pistols produced, and which were here shown

* Graham Campbell said, they all came back to Smith's. Vide page 51.

shown to, and examined by the witness, were one of the pairs used that evening : That Smith had them, the witness having borrowed them about a month before from Mr Brodie, and given them to Smith : That the same evening, as the witness and Brown went to the New Town, Brown informed him, that they had got only L. 16 odds in the Excise Office ; and, on the Friday evening following, the witness called at Smith's, and got his fourth share of the said sum : That, at the time the money was so divided, Brodie and Smith were both present, and they also each got a 4th share of it : That Brodie then paid the witness some money that he owed to him : That, of the money the witness received at this time, there was a L. 5 note, of which he gave in some change : That he afterwards gave the said note to Smith, and saw him change it the same evening in Mr Drysdale's, on taking out a ticket in the Mail Coach for his wife to Newcastle for next day.

day *. And being asked, If he had any particular mark by which he could know the said note again? answered, That it was a Glasgow note; and battered on the back with paper. And Mr Solicitor General being here about to show the witness the note libelled on, the *Dean of Faculty* objected, That the note libelled on, as described in the indictment, was said to be a

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* This evening, Friday, Brown gave information, and Smith, Ainslie, Mrs Smith, and Graham Campbell, were taken into custody. The reason of Brown's giving the information is said to have been, that he had seen the advertisement from the Secretary of State's Office that evening, promising a reward and a pardon to the person who should discover the robbery of Inglis and Horner's shop. Brown was under sentence of transportation in England, and in daily fear of apprehension. The reward and pardon were too powerful to be resisted; and he foresaw that it would be necessary for the prosecutor to obtain his pardon for his offence in England, before he could be admitted as a witness. No wonder that the Lord Justice Clerk said to him, after his examination, that he was a clever fellow.

L. g bank-note : That the note alluded to by the witness, he had said, was a Glasgow note ; and, as the indictment libelled on a *bank-note*, it was impossible that they could be the same, as the note of a private banking company could not, with propriety, be called a *bank-note*, nor any but those issued by a public bank, constituted by royal charter.

Mr Solicitor General answered, That he saw no good reason for the distinction contended for by the Dean of Faculty, which was a mere quibble upon words, as the note of every banking company was called a *bank-note* ; but he submitted the matter to the Court, who sustained the objection, and would not allow the note to be shown to the witness.

The witness being then shown the counter and iron crow libelled on, said they were the same used at opening the Excise Office ;

Office: That they called the coulter *Great Samuel*, and the iron crow *Little Samuel*.

On cross examination,—the witness said, that at the time they went to commit the robbery on the Excise, he left Smith's house about a quarter before eight o'clock: That he went away before the rest: That Brodie came to the Excise just about eight: That they were absent altogether about an hour: That the reason they chose Wednesday evening for the robbery was, that the old man had to watch that night; and they chose the hours from eight to ten o'clock, because there was no watch at that time: That he does not remember who it was that first proposed robbing the Excise.

WITNESS XXVII.

John Brown, alias *Humphry Moore*, residenter in Edinburgh.—The same objection was stated by the *Dean of Faculty* to the admissibility of this witness that had been
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stated against Ainslie, the preceding witness; with this addition, that, besides being an admitted accomplice in the robbery charged in the Indictment, he had been accused and convicted of a former felony by the judgment of a proper Court, who had pronounced sentence of transportation against him; so that he was not only in the situation of *infamia facti*, but of *infamia juris*, which, at the same time that it destroyed his credibility, totally disqualified him from being a witness at all, even in a civil cause, and much less, therefore, could he be a witness in a criminal one, where his evidence might affect the lives of unfortunate individuals.

The *Lord Advocate* answered, That the objection made to Ainslie by no means applied to this witness, as he was the person who first made the discovery: That he had done it voluntarily, and therefore was entitled in justice, and according to practice, to be admitted evidence; and that, at any rate,

rate, the Court had already removed the first part of the objection, by determining the admissibility of Ainslie: That, with regard to the felony which the witness had committed in England, he had received his Majesty's pardon for it; which was produced and here read, and which, his Lordship contended, restored the witness to his full credit and capacity. His Lordship exemplified this doctrine by a variety of authorities from English law books of the highest character, and read the passages in Court. That, if the witness was, by the pardon, restored to credibility in England, where the crime was committed, it was absurd to say that he was inadmissible or infamous in Scotland, where the crime was not committed. So far was this from being the case, that his Lordship contended, that no pardon was necessary to entitle the witness to bear evidence in this country: That the crime from which the infamy was inferred, was committed in England, which, legally speaking, was a foreign country, and
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the sentence of their Courts had no effect *extra territorium* ; and nothing could render a person infamous in this country, or disqualify him from being a witness, but the sentence of a supreme Court in Scotland.

Mr Wight, for the prisoners, replied, That the pardon secured the witness from punishment, but by no means restored his credibility. The objection, however, was not confined to the infamy annexed to the crime mentioned in the pardon alone ; for he held in his hand an extract of another sentence of infamy against Brown, of the Justices of Peace for the county of Stirling, proceeding upon his own confession of theft, and by which he is banished that county, under certain certifications, for which crime the witness had received no pardon. He also mentioned, that a bill had been found against Brown by a Grand Jury in England, for a separate felony from that for which he had been pardoned.

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The *Lord Advocate* said, He had never heard of either of these facts ; but, although true, they did not amount to a disqualification of the witness ; for it was a fixed point in law, that the sentence of an inferior court, especially without a proof and without a jury, had not that effect ; much less could the finding of a bill by a Grand Jury in England, of which there was no evidence ; and, at any rate, it was no more than an unsubstantiated accusation, which would go for nothing.

The *Dean of Faculty* said, That the King had, no doubt, a right to remit the punishment of any offence against the law ; but it appeared to him a most extraordinary doctrine, that the King's pardon restored the *credibility* of the person pardoned. He had heard that the King could create a *Nobleman*, but that he could not make a *Gentleman*, much less could he make a hardened villain an honest man. The King had no such prerogative ; nay, such a conversion

version was esteemed a *miracle* in the King of Kings! The pardon could not alter the *nature* of the criminal—"as well might the Ethiopian change his skin, or the Leopard his spots." To say, therefore, that a piece of parchment, with a seal dangling at it, or a man being on this or the other side of the Tweed, made him an honest or a better man, or more worthy of credit than he would otherwise have been, was a proposition so absurd and self-destructive, that it could not be imposed upon the meanest capacity, and was more hostile to reason and common sense than the most absurd sophistries of the Church of Rome.

The Judges then severally delivered their opinions on the contended point at considerable length. They agreed, in general, that the question was new, and of importance: That, had the conviction of the witness proceeded upon a trial by jury in Scotland, they would have been for sustaining

raising the objection ; but, as the conviction and sentence were from *England*, and as it appeared, from the law authorities read by the Lord Advocate, that one of the effects of a pardon, in that country, was the restoring the criminal pardoned to the state and character that he held previous to the conviction, that that sentence and pardon, on coming to this country, must bring their character, their construction or meaning, and their effect along with them. *Lord Swinton*, in particular, quoted several texts from the civil law, purporting, that a remission, so far from restoring, blemished the reputation of him whom it relieved from punishment : That our Municipal Law was explicit to the same effect. The statutes of Robert I. among others, debarred *convicts redeemed from justice* from being evidence ; and that this act was expressly quoted and laid down as law by Sir George Mackenzie, who was at least our most ancient author upon the criminal law, and there was no practice or decision to the

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contrary.

contrary. This, however, did not appear to be the law of England ; and to prove this, his Lordship, in addition to the authorities referred to by the Lord Advocate, quoted a passage from *Mr Justice Buller's Treatise on Trials*, a book of the greatest authority, which laid down, " That if a
 " person, found guilty on an indictment for
 " perjury at common law, be pardoned by
 " the King, *he will be a good witness, be-
 " cause the King has power to take off eve-
 " ry part of the punishment.*" That, as to the sentence of the Justices of Peace of Stirlingshire against the witness, no stress could be laid on it, as it is now a settled point, that no sentence of an inferior court, proceeding without the verdict of a jury, was sufficient to set aside any person from being a witness.

Their Lordships repelled the objection to the witness's *admissibility*, and allowed the examination to proceed ; reserving his *credibility*

ability to the consciences and good sense of the jury.

The witness *John Brown*, alias *Humphry Moore*, being then called in, he received an exhortation from the Lord Justice Clerk, similar to that given to Ainslie; and being examined, deponed,

That he knew and was intimate with both the prisoners, and identified them at the bar: That the preceding witness (Ainslie) was often of their parties: That he had frequently met Brodie at Smith's, and other places: That he had occasion to know the particulars respecting the robbing of the Excise Office, as it was pre-concerted between the prisoners, the witness, and Ainslie, as far back as the 30th of November last, the night on which the Free Masons made a public procession: That, on that evening, the 30th of November, the witness, along with Smith and Ainslie, went and opened the outer-door of the Excise Office

Office with a false key: That they opened the door to the hall with toupee irons, but could not get the cashier's door opened: That Smith said a coultter would be a good thing to open it; but being afraid to stay longer at that time, they came away; but the key would not lock the outer-door again, and they left it unlocked. The witness concurred with Ainslie in every particular respecting their going to Duddingston, having Smith's black dog with them, drinking the porter, stealing the coultter from the plough in the field, secreting it in Salisbury Craggs, and taking it from thence in the dusk of the evening of the day of the robbery, and bringing it to Smith's house: That they had an appointment there that evening at seven o'clock, and expected Brodie there at that hour, but he did not come till near eight: That the purpose of their meeting was to go and rob the Excise: That they met in an upper room in Smith's house, and had some herrings, chicken, gin, and *black cork*; which last he explained

ed to be Bell's beer : That he had seen Brodie that afternoon, when he was dressed in light-coloured clothes ; but, when he came to the said meeting, he was dressed in black : That, when Brodie came into the room at Smith's, he took a pistol from his pocket, and repeated some words of a song, as he said, of Macheath's, about *turning their lead into-gold** : That he (Mr Brodie) brought some small keys with him, and a double picklock, which picklock was the same then shown to the witness : That it was agreed that Ainslie should remain on the outside, within

* The witness seemed to be well acquainted with Macheath, but not with the Beggar's Opera.—
The song is by Matt of the Mint.

Let us take the road.

Hark ! I hear the sound of coaches !

The hour of attack approaches,

To your arms brave boys, and load.

See the ball I hold.

Let the chemists toil like asses,

Our fire their fire surpasses,

And turns all our lead to gold.

within the rails, with a whistle, to give the alarm in case of danger; and Brodie was to be stationed within the outer-door, for the same purpose; and that the witness and Smith were to go into the cashier's room: That they accordingly went by detached divisions, Ainslie first: That the witness and Smith had crape to disguise their faces, and Smith had a wig, but did not remember that Brodie had any crape: That, when the witness went there, the porter was coming out, and he dogged him home; and his reason for this was, to see that he had not gone on an errand and to return: That, on the witness's return to the Excise Office, he met Brodie, who told him that Smith was in the inside, and desired him to go in, which he did: That, as he passed, he saw Ainslie at his post, and received from him the coultter, or *great Samuel*; and that he found the door open, and Smith in the inside, in the hall: That the outer-door of the cashier's room was opened by Smith with a pair of curling irons, and the witness

ness assisted him in *prizing* open the inner-door with the coultter and iron crow : That Smith carried the dark lanthorn ; and, on getting in, they opened every press and desk in the room, either by violence, or by keys which they found there : That they remained about half-an-hour : That they heard some noise, and cocked their pistols, which were loaded with powder and ball : That, when they went out, they did not see Brodie or Ainslie, and found they were both gone : That they found in a desk in the cashier's room L. 16 odd money, which they carried away with them : That it consisted of two five pound notes, six guinea notes, and some silver : That, on coming out, they crossed over the street, went down Young's street, and then to Smith's house by different ways : That the witness heard no whistle while in the office : That they left the Excise door unlocked, but carried the key with them : And being shown the key, and also the coultter, iron crow, wedges, curling-irons, and dark lanthorn, he identified

tified them to be the same that were used on that occasion : That the witness, Smith, and Brodie, had each a pair of pistols loaded : And being shown the pair of pistols libelled on, he said they were the pair that Smith had at the Excise : That, soon after their arrival at Smith's, Ainslie came in, and the witness proposed that they, meaning himself and Ainslie, should go over to the New Town, to prevent suspicion, which they did :—Concurred with Ainslie as to what passed there, not only on that night, but the Friday evening following, respecting their being in Frazer's, purchasing the ticket to Newcastle, changing the five pound note, &c. : That, on the Friday evening after the robbery, the witness was sent for to Smith's : That Brodie, Smith, and Ainslie, were there ; and he, at that time, received from Brodie L. 4 some odd shillings, as his fourth share of the money taken from the Excise : That, the same evening, the witness made a discovery of the robbery of the Excise to the Procurator Fiscal,

Fiscal, but did not at that time mention any thing of Brodie's concern in it *: That, next day, the witness was sent to England, to trace some goods taken from Inglis and Horner's shop; and, on his return, was informed that Smith had emitted a declaration, informing of Brodie's guilt; in consequence of which he (Brodie) had absconded.

On cross examination by Mr Brodie's Counsel, the witness said, that he had on a great coat that night, belonging to Michael Henderson: That as he was going down to the Excise Office the clock struck eight: That he was again at Smith's house at nine. Being asked, if Brodie was present when the pistols were loaded? he said he was: That Brodie came to Smith's that day in coloured clothes, with pistols, between dinner and tea. Being asked, If that might be four o'clock? he answered, He could

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not

* Vide note, page 81.

not tell what the clock was. Was it after three o'clock that afternoon? He was not certain. Was it after two? Yes, he was certain it was * : That they eat some herrings in Smith's before going to the Excise; That he was certain as to the small pistols that Mr Brodie carried in his breeches pocket. Being asked, How he knew the key now produced to be the same that was used in opening the Excise Office? he said, He knew it very well; for there was not a key in five hundred like it; and he defied the Dean of Faculty to show him such another.—Here the witness was rather warm, and said, That there seemed to be an intention to *entrap* him, and that he would not answer *impertinent* questions.

The *Dean of Faculty* requested the Gentlemen of the Jury to keep in remembrance the manner in which this witness gave his evidence,

* Vide note on Matthew Sheriff's exculpatory evidence.

evidence, and the intemperate heat he had discovered.

The Court corrected the witness, by informing him, that the Counsel for the prisoners were entitled to put any questions to him which they thought proper, relating to the crime charged: Upon which Brown said, that, in giving this evidence, he had said nothing but truth, and he had rather softened the matter, than otherwise, with regard to Mr Brodie. Upon his retiring, the Lord Justice Clerk said to him, " Brown, " you seem to be a clever fellow, and I " hope you will now abandon your dissipated " courses, and follow some honest employ- " ment."

Brown answered,—" My Lord, be assured that my future conduct shall make " amends for my past."

The

The parole evidence for the Crown being here closed, the Clerk of the Court, at the desire of the Counsel for the prosecution, proceeded to read the several declarations of Smith, and the letters and declaration of Brodie, all mentioned in the Indictment, of which full and correct copies are subjoined. The parts of Smith's declarations marked with inverted commas, were not read in court, at the special request of Mr Brodie's Counsel, as they had no relation to the crime libelled ; and this the Lord Advocate obligingly agreed to, although he said he had a right to have the whole read to the Jury.

These parts were left out in the first edition of this trial, for the same motives of delicacy which prevented their being read in court ; but, as the public are already in
pos-

possession of many other facts and circumstances, which have no connection with the trial, it was thought unnecessary to withhold these declarations of Smith's.—The reading them in Court might have tended to influence the Jury against the prisoners; but, now that the trial is over, and the panels found guilty, the publishing of them cannot affect these unhappy men in the smallest degree, and the public were entitled to have their curiosity gratified.

C O P I E S

C O P I E S
O F T H E
D E C L A R A T I O N S
O F

GEORGE SMITH, Grocer in Edinburgh,
Taken before ARCHIBALD COCKBURN, Esq; Sheriff
Depute of the County of Edinburgh.

F I R S T D E C L A R A T I O N,

Taken upon the 8th March 1788.

DECLARES, That it is about a year
and a half since the declarant came
to Scotland: That he was never in it be-
fore: That he was born at Boxford, with-
in four miles of Newburgh, Berkshire:
That the declarant and his wife travelled
the

the country of England as hawkers, with a horse and cart : That he brought a horse to this country, but no cart : That, when he first came to Edinburgh, he put up at Michael Henderson's, having heard his house mentioned by travellers in England as a traveller's inn : That he was taken ill after his arrival in this country, and confined for about four months in Michael Henderson's, which obliged him to send for his wife to this place : That he sent for goods from England, which he sold, as also his horse, in order to support himself : That, since he came to this country, he has frequented *Clark's* in the Flesh-market Close, which is a gambling-house ; and in which house he was in use to meet a variety of people, and among the rest Andrew Ainslie and John Brown : That the declarant first got acquainted with Ainslie and Brown in Michael Henderson's : That Ainslie gave himself out for a shoemaker ; but the declarant cannot tell of what profession Brown is : That the CLUB, as it was called,

ed, at *Clark's*, as the declarant believes, has been doing *little* these three months past : That the declarant never played there to go very deep, and was never seen to win or lose above thirty shillings, having never taken more than that sum in his pocket alongst with him ; but, upon recollection, thinks that he has won above thirty shillings : That the declarant inclines to believe that John Brown has rather been unfortunate at the Club. Declares and acknowledges, That the declarant took a cellar in Stevenlaw's Close from a woman whom he now sees in the office : That the declarant afterwards took Ainslie to the said woman, and told her that this was the gentleman who was to possess the cellar ; but he does not remember of calling him by the name of Campbell, or any other name : That the declarant gave the rent, which was ten shillings, to Ainslie, who gave it to the woman. Declares, That the declarant went with Ainslie to Mrs Clark's house in George's Square, where Ainslie took

took a stable from that Lady ; but the declarant and Ainslie remained in the kitchen, and neither of them saw Mrs Clark, as he thinks : That the declarant does not recollect for what purpose Ainslie said it was he wanted to rent the stable : That the declarant saw Ainslie pay five shillings, or some such sum, as a month's rent for the stable per advance. And being interrogated, What was the purpose of the vice which stands in the cellar or his house ? declares, That he has had that for seven or eight years, and that he used it for putting tongues in buckles, or any thing of that sort ; but he has not used it since he came to his present house : That his wife intended to have set out this day on a visit to her relations in England ; and for that purpose the declarant took out for her a ticket in the mail coach at Drysdale's, where he changed a five pound bank-note, and paid for it. Declares, That the black dog now in the office belongs to a neighbour of his ; but, from the declarant's giving him now and then some

O

bones

bones to pick, he frequents the declarant's house, and follows him and his wife : That the note he changed at Drysdale's, the declarant has had in his possession for above two months past : That he got it from a smuggler, and it was battered then as it now is.

T H E
S E C O N D D E C L A R A T I O N
O F
G E O R G E S M I T H,

Taken at Edinburgh upon the 10th day of March
1788.

Compeared, in presence of the Sheriff,
George Smith, formerly examined on Saturday the 8th current, after having sent
notice

notice to the Sheriff that he wished to speak with him. Came to the office, and told the Sheriff, that he wished to have an opportunity of making a clean breast, and telling the truth ; upon which the Sheriff informed him, That, as he, the Sheriff, knew he stood in a very ticklish situation, it was his duty to let him know, that whatever he told or discovered was not to be accepted of under any condition or promise whatever, or that his doing so would operate any thing in his favour, and that therefore he was at perfect freedom either to speak out or hold his tongue, as he judged best. And the said George Smith having declared that he wished to tell the truth, and communicate all the *guilty scenes* in which he had been concerned for some time past, since he came to the town of Edinburgh, he was desired to proceed. Declares, That, in the end of October, or beginning of November last, the declarant, in company with Andrew Ainslie and John Brown, whose real name is *Hampbry Moore*, went to the
College

College of Edinburgh, about one o'clock in the morning. Having got access at the under gate, they opened the under door leading to the Library with a false key, which broke in the lock ; and thereafter they broke open the door of the Library with an iron crow, and carried away the College mace. Declares, That the declarant has, almost since his first arrival in Edinburgh, been acquainted with Deacon William Brodie ; and he saw him first at Michael Henderson's, where he was introduced to the declarant by one *****, at the time the declarant was confined in that house : That Brodie, in the course of conversation, suggested to the declarant, that several things could be *done* in this place, if prudently managed, to great advantage, and proposed to the declarant that they should lay their heads together for that purpose : That, in consequence of this concert, the declarant and Brodie were in use to go about together, in order to find out the proper places where *business* could

could be *done* with success :———‘ That
 ‘ Brodie, in their walks, carried the de-
 ‘ clarant to the College Library, where,
 ‘ having observed the mace standing, Bro-
 ‘ die said that they must have it: That
 ‘ Andrew Ainslie was afterwards sent by
 ‘ the declarant and Brodie to look at the
 ‘ Library, under pretence of calling for
 ‘ some body, in order to see if the mace
 ‘ was always in the same place; as they
 ‘ suspected it might be one day in the Li-
 ‘ brary, and another day some where else,
 ‘ which would have rendered an attempt
 ‘ upon the Library precarious: That Ains-
 ‘ lie reported, that the mace was in the
 ‘ same place that the declarant and Brodie
 ‘ had seen it; and, upon getting this re-
 ‘ port, the theft of the mace was commit-
 ‘ ted, as before mentioned. Declares, That,
 ‘ since the mace was stolen, as the declarant
 ‘ thinks, the declarant, along with Brown
 ‘ and Ainslie, laid a plan of breaking into
 ‘ John Tapp’s house, and taking his mo-
 ‘ ney: That this business was suggested,
 ‘ and

' and pressed, by Brown, the declarant ra-
 ' ther being averse to it: That Brown told
 ' the declarant that he knew the key of
 ' Tapp's shop opened the door of his house,
 ' and brought it to the declarant to look
 ' at; which, upon seeing, the declarant said
 ' there was nothing in it; meaning by that,
 ' that the lock to which it belonged could
 ' easily be opened. Declares, That, accor-
 ' dingly, soon after this, and, as he thinks,
 ' about Christmas, or near to it, Brown
 ' kept Tapp in his shop drinking, and the
 ' declarant and Ainslie, betwixt nine and
 ' ten o'clock at night, opened the door of
 ' the house with a false key, and took out
 ' of his drawers eighteen guinea notes and
 ' a twenty shilling one, a silver watch,
 ' some rings, and a miniature picture of a
 ' gentleman, belonging to Tapp's wife;
 ' which picture they broke for the sake
 ' of the gold with which it was backed.
 ' Declares, That, in the month of August
 ' last, as he thinks, the declarant, in com-
 ' pany with William Brodie and An-
 ' drew

' drew Ainslie went to a shop in Leith;
 ' which they broke into, by means of two
 ' picklock keys, one for the padlock, and
 ' another for the stock-lock : That the de-
 ' clarant and Ainslie went into the shop;
 ' and Brodie kept watch, to give an alarm
 ' in case of danger : That from this shop
 ' they carried off two pair of wallets full of
 ' tea, which were taken from four chests :
 ' That Ainslie was ill at this time ; and
 ' Brodie being weakly, Ainslie and he
 ' could scarcely manage one of the wallets,
 ' which obliged him to put it into an old
 ' press bed, (as the declarant took it to be),
 ' which they found standing in a shade, in
 ' a field adjoining to the Bonnington road
 ' to Leith : That it was proposed to lodge
 ' the tea in Brodie's ; but he afterwards
 ' objected to it, which was the reason that
 ' they never inquired after it more.—That,
 ' about two months ago, the declarant, in
 ' company with Andrew Ainslie, broke
 ' into the shop of Inglis, Horner, and
 ' Company, and took therefrom a large as-
 ' sortment

' sortment of valuable goods, composed of
 ' silks and cambricks : That the silks were
 ' mostly black, excepting two pieces, a piece
 ' of plain white sattin, a piece of variegated
 ' ditto, and a lead-coloured silk, in quan-
 ' tity about ten yards, which Brown gave
 ' to a girl, an acquaintance of his, of the
 ' name of Johnston : That the silks were all
 ' sent to England, except the silk before
 ' mentioned, a piece of black silk of about
 ' two yards and a quarter, in two odd bits,
 ' which the declarant gave to his wife to
 ' make a cloak to her child; and about
 ' twelve yards and a half of thick tweed
 ' black silk for gentlemen's vests and breeches,
 ' and two yards and a half of black floren-
 ' tine sattin, with about six yards of cam-
 ' brick : That Brodie suggested to the de-
 ' clarant the *doing of* Inglis and Horner's
 ' shop, as the goods there were very rich
 ' and valuable, and a small bulk of them
 ' carried off would amount to a large sum.
 ' —That Brodie and the declarant went fre-
 ' quently to try the pad and stock lock of
 ' Inglis

' Inglis and Horner's shop, and they did so
 ' most commonly on the Sunday forenoon;
 ' when the people were in church: That
 ' the padlock was of a difficult construc-
 ' tion, and was opened at last by a key of
 ' the declarant's own making: That Bro-
 ' die made one that did it also; and he,
 ' on one occasion, went by himself with his
 ' key, and unlocked the padlock, but could
 ' not lock it again; upon which he came
 ' to the declarant, and told him what he
 ' had done, which he did also to Ainslie
 ' and Brown: That they were all very an-
 ' gry with him, and said, that he had more
 ' than likely spoilt the place after all the
 ' trouble they had been about; but Brodie
 ' told them he hoped not, as he had fixed
 ' the padlock with a bit stick, in a way that
 ' it would not be discovered; and, upon
 ' looking at the place afterwards, which they
 ' all did, they found the lock to be just as it
 ' was.' Declares, That, on Wednesday even-
 ' ing, the 5th instant, the declarant, along with

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William

William Brodie, John Brown, and Andrew Ainslie, between the hours of eight and ten o'clock at night, broke into the Excise Office, and carried off from that about sixteen pounds, consisting of two five pound notes, four guinea notes, one twenty shilling note, and about seventeen shillings and sixpence in silver: That this money was divided among them, and Brodie received his share: That Brodie first planned the Excise Office, and repeatedly carried the declarant there, under pretence of calling for Mr Corbett from Stirling, and other people, in order to learn the situation of the place; and, on one of these occasions, the declarant observed the key of the outer-door hang upon a nail near by it, and, without taking it down, he clapped some potty upon it, and carried away the wards: That Brodie took a drawing of the wards of the key, which the declarant thinks he has in his possession: That Brodie told the declarant how to get into the cashier's desk, and where the money lay, which was in two places; and,
in

in each of these places some money was found: That Brodie came to the knowledge of these circumstances, by being present when Mr Corbett from Stirling, who is a connection of Brodie's, drew money at the cashier's office: That, when they broke into the Excise Office, the outer-door was opened by a key which the declarant had filed from the pattern above mentioned: That the plan of accomplishing this business was as follows: Ainslie was to keep on the outside of the Office, hanging over the palisadoes, in the entry, with a whistle of ivory, which was purchased by Brodie the night before, with which, if the man belonging to the Excise came, he was to give one whistle, and, if any serious alarm was perceived, he was to give three whistles, and then make the best of his way to the Excise gardens in the Canongate, in order to assist the declarant, Brodie, and Brown, to get out at the back window of the hall, it being determined, in case of surprise, to bolt the outer-door on the inside, and make
the

the best of their way by the window : That Ainslie was armed only with a stick, which he left somewhere in the court ; and which stick was purchased by the declarant : That Brodie had a brace of pistols, the declarant a brace and a half, and Brown a brace, which the declarant borrowed from Michael Henderson : That these arms were all loaded with double balls, as they were determined not to be taken, whatever should be the consequence : That the declarant and Brown were told afterwards by Brodie and Ainslie, that a person had come running down the court, and gone in at the outer-door, and up stairs : That, upon this, Ainslie had given the alarm by a whistle, as was agreed upon, and made the best of his way ; but none of them in the inside heard the whistle ; at least neither Brown nor the declarant did, and Brodie said he did not : That, when the door opened, Brodie was standing behind it ; and, upon the person's running up stairs, Brodie made off : That the declarant and Brown, when in the cashier's

shier's room, heard the outer-door open; but, trusting to Brodie's being at the door, and staunch, they did not mind it: That the declarant and Brown, when coming out of the cashier's office, heard a person coming hastily down stairs, which made them stop, or they must have met him: That, upon this, the declarant said to Brown, *Here must be treachery; get out your pistols, and cock them*; which they did accordingly: That, upon coming to the outer-door, they found it shut; the declarant and Brown having seen the person that came down stairs smash the door after him when he went away: That the declarant and Brown went down into Young's-street, where Brown gave the declarant a small crow, with some wedges, and a shirt; also a large chissel: That the chissel and shirt were given to Brodie afterwards, with the bank-notes, the declarant's dark lanthorn, and two bottles, which they had carried from the Excise Office, and took for wine: That the key with which the outer-door was

was opened, the crow, a pair of curling irons, with which the outer-door of the cashier's room was opened, were all hid by the declarant in a wall between the Earthen Mound and the North Bridge : That, in virtue of repeated observations, it was discovered that two men watched the Excise Office, time about ; and Ainslie and Brown found out, that, from eight to ten o'clock at night, there was commonly no man in the Excise Office, which was the reason of the thing being done at that time : That it was concerted by Brodie, in case of interruption, by the man coming into the Office before the business was accomplished, to conceal themselves quietly until he was gone to rest, and then to secure him ; and they were, if this happened, to personate smugglers, who came in search of their property that had been seized ; and the declarant had a wig of Brodie's father's in his pocket, in order to disguise himself : That the wig and scarf, and small wedges, were left in the second arch from
the

the fouth of the North Bridge: That the scarf was within the wig: That Brodie, after having been in the Excise, where he had on black cloaths, went home and changed them to his ordinary dress, of a marbled colour, and a round hat: That Brodie told the declarant, that his sister had remarked him changing his dress in such a hurry: ' That there is in Brodie's house a horse-pistol belonging to the declarant, as also ' a very large, remarkable key, which Ainslie and Brodie stole from the Abbey ' when there was a sale there: That Brodie has a parcel of keys, of different sorts, ' which he has been altering, and, among ' them, is the key which he made for ' Inglis and Horner's padlock: That, in ' Brodie's bed-room, there is a chest containing a false till, in which the declarant inclines to think some of Brodie's ' false dice, and other things leading to a ' detection of his guilt, may be found: ' That the College mace and Tapp's watch ' were sent to Chesterfield, under the direction

' rection of William Ward, at William Cow-
 ' ley's, Bird in hand, Chesterfield, Derby-
 ' shire; to which place, and at which time,
 ' the rings taken from Tapp, and the gold
 ' from the miniature picture, were also sent:
 ' That a private letter was wrote by Brown,
 ' as he thinks, to one Tasker, formerly of
 ' this place, and whose real name is Murray,
 ' a man of bad character; which letter had
 ' no name at it but only a G. and S. and
 ' a stroke for each of the other letters in
 ' the declarant's name: That the pocket-
 ' book taken from Tapp's with the money,
 ' was thrown by Ainslie and the declarant
 ' into a deep piece of water to the south of
 ' the Meadows: That the goods taken
 ' from Inglis and Horner's shop were sent
 ' to Chesterfield in trunks, one of which
 ' was purchased by the declarant, and an-
 ' other by Ainslie: That the declarant
 ' knows the places where they were pur-
 ' chased, and will point them out: That
 ' the first trunk went from this by the Ber-
 ' wick carriers three weeks ago on Wed-
 nesday

' nelday next : That the goods were re-
 ' moved from a cellar, in which they were
 ' originally put, in Stevenlaw's close, taken
 ' for the purpose, notwithstanding of what
 ' was said by the declarant in his declara-
 ' tion of Saturday last : That Ainslie went
 ' and brought a porter from the street, who
 ' received the goods from the declarant and
 ' Ainslie half way or more up Burnet's
 ' close, where Brown and Ainslie lodged,
 ' near the bottom : That the porter had no
 ' creel, but only ropes, with which he tied
 ' the trunk upon his back ; and Ainslie fol-
 ' lowed him, and saw him carry and deli-
 ' ver it to the Berwick carrier's quarters,
 ' for which he received sixpence : That the
 ' second parcel of the above goods were
 ' sent under the direction of Elizabeth Scott
 ' or Sprott, at William Cowley's, Bird in
 ' hand, Chesterfield ; and the reason of put-
 ' ting this was, because the initials of her
 ' name were upon the top of the trunk :
 ' That no letter was wrote to Tasker or
 ' Murray about the last parcel of goods, as

Q

' the

' the declarant's wife was to have left this
 ' on Saturday last ; and the declarant told
 ' her he had some goods for her to dis-
 ' pose of at Chesterfield ; but she know no-
 ' thing how the goods were obtained, and
 ' is entirely innocent of any participation
 ' or knowledge of his crimes.' Declares,
 That Brodie brought with him to the de-
 clarant's house, a day before, as he thinks,
 the Excise was robbed, a coil of ropes,
 new, which he either had in his possession,
 or must have bought ; as also a strong chis-
 sel with a brass virral, and two pieces of
 wax taper : That the brass chissel is, as the
 declarant believes, now in Brodie's shop or
 house : That the coulter with which the
 inner-door of the Excise Office was broke
 open, and two iron wedges, were taken
 from a plough, by Brown and Ainslie, near
 to Duddingston, as they said, the Friday
 before ; and the declarant makes no doubt
 but a black dog, Rodney, might be with
 them, which used to follow the declarant
 and them : That the coulter and wedges
 were

were left in the cashier's office, and were concealed in Salisbury Crags from the time the coulter was taken away, to the time the Excise Office was broke. This he declares to be truth. And further declares, That the ropes brought by Brodie, as before mentioned, are in the declarant's house ; as also a vice and files, and a spring-saw, with which the declarant used to make and alter keys : That the saw the declarant got from Brodie about five or six months ago : That the declarant, before this, bought a saw, with a pair of large pincers, at a hardware shop below Peter Forrester's, on the High Street ; and the declarant inclines to think that Brodie bought his saw at the same place : That in the declarant's drawer, along with the said saw and files, there will also be found a key-hole saw, which was bought and given to the declarant by Brodie. Declares, That the declaration emitted by him on Saturday last, so far as inconsistent with the present, is not true.

T H E

THE
THIRD DECLARATION
OF
GEORGE SMITH,

Taken at Edinburgh, the 19th day of March 1788,

Declares, that the small crow, the false key, and the curling tongs, now shown to him, are the same that were found by the declarant, William Middleton, A. Williamson, and J. Murray, in an old dyke, on the sixteenth instant; and the label annexed to them is signed by the declarant, as relative hereto, of this date. Declares, That the said crow was carried to the Excise Office for the purpose of opening the desks in the cashier's room: That the said false key is the one that opened the outer-door of the Excise; and the curling tongs were squared
at

at the point by the declarant, and taken to the Excise for the purpose of opening the spring-catch of the outer-door of the cashier's room, which it did. And being shown a coultter and two wedges, declares, That he believes they are the same that were used in forcing open the inner-door of the cashier's room in the Excise, and were left there. And being also shown a spur, with the upper leather at it, declares, That it belonged to William Brodie; and the declarant tore the end of the leather, in order that it might appear, when found, to have dropped from the foot, by its being torn by accident by the buckle: That Brodie brought the said spur to the declarant's house, and from thence it was taken to the Excise Office, on purpose that it might be left there, to make it believed it had been done by some person on horse-back: That the spur was left in the Excise Office by John Brown, as the declarant was told by him, upon the declarant's questioning him if he had done it; and the label annexed

annexed to the spur is signed by the declarant, as relative hereto, of this date. And being shown a parcel of ropes which the declarant is now told were found in his house, declares, That the declarant has no doubt but that they are the same ropes which were brought to the declarant's house by Brodie, and, after being knotted into a ladder, were carried to the Excise by the declarant, brought from thence by him, and unknotted again in the declarant's house, in which case he now sees they are. And being shown a picklock, which the declarant is informed was found in William Brodie's counting-room in the shop, declares, That it is the same which William Brodie gave to the declarant in his own house before they went to the Excise, and which Brodie wanted to fasten with some nails, as the handle of it went round when the picklock was much pressed. Declares, That the declarant carried that picklock to the Excise Office, and, after they had left it, it was returned by the declarant to Brodie,

die, when under the arch of the North Bridge, where Brodie's father's wig, the scarf, and wedges, were left, as mentioned in the declaration of the tenth instant; and the label affixed to the said picklock is signed by the declarant, as relative hereto, of this date. And being shown a black case, with a lid to it, the case full of potty, declares, That it was found, as the declarant thinks, in Mr Brodie's drawers, by the declarant and George Williamson, on Monday the tenth instant: That the declarant had often seen the said case, with potty in it, before, in Brodie's possession, when in the declarant's house; and the declarant approved of Brodie's keeping the potty in a case, as the lid prevented an impression of a key, when taken, from being defaced; and the said case and potty having now a label annexed to it, the same is signed by the declarant, as relative hereto, of this date. And being shown a five pound note, declares it is the same five pound note which the declarant carried to Drysdale's, and
 changed

changed there, to purchase his wife a ticket in the Newcastle stage : That the declarant believes it to be one of the five pound notes taken from the Excise, they being both of the Glasgow Bank ; but the other five pound note was not ornamented with the same colour with the one now shown to him : That the notes were passed on the back by Brodie ; and the one now produced is signed by the declarant on the back, as relative hereto, of this date. And being shown a parcel of keys, declares, That they are the same which were pointed out by the declarant concealed in Salisbury Crag, on the sixteenth instant, to William Middleton, Alexander Williamson, and James Murray ; and the label annexed to them is signed by the declarant, as relative hereto, of this date.

‘ Declares, That, among this parcel, there
 ‘ is the false key which opened the outer
 ‘ door of Inglis and Horner’s shop, to
 ‘ which the declarant now sees a label an-
 ‘ nexed, and which is signed by him as re-
 ‘ lative hereto, of this date.’ And being
 shown

shown a parcel of keys which were found by the declarant and George Williamson upon the 10th current, declares, That the double clank among the said parcel was brought by the declarant from Sheffield, and given to Brodie; the reason of which was for fear it should be found in the declarant's possession, and thereby create suspicion; but it was not likely to be discovered in Brodie's. Declares, That the head and stalks of two keys in the said parcel were cut from old keys by Brodie, and were intended to be finished for the purpose of opening the spring latch of the outer-door of the cashier's room in the Excise Office: ' That a false key in said
' parcel, finished, was made by Brodie for
' the purpose of opening the door of the
' Chamberlain's cash-room of the city of
' Edinburgh; and to the said double clank,
' the heads and stalks of two keys for the
' Chamberlain's Room, the declarant sees
' labels annexed, of this date, and are signed
' ed by the declarant as relative hereto.

R

' The

' The declarant and Brodie had frequently
 ' been at the door of the Chamberlain's
 ' Office, in order to take the impression of
 ' the key hole ; That Brodie shewed the
 ' declarant the said key after it was made ;
 ' and Brodie told the declarant that it did
 ' not answer.' And being shown two par-
 cels of keys, with labels annexed to them,
 and two pieces of black stockings, declares,
 That they are the property of the declar-
 rant, and were concealed by him in Salis-
 bury Crag; and the labels annexed to
 them are signed by the declarant and Sher-
 riff as relative hereto, of this date. And
 being shown two trunks, declares, That
 they are the same two trunks that were
 purchased by the declarant and Andrew
 Ainslie : That the round one was purcha-
 sed by the declarant from a man oppo-
 site to Todrick's wynd, whom he saw this
 day in the office, for which the declarant
 paid three shillings ; and the other was
 purchased by Ainslie from a man nearly
 opposite to Richardson's the smith, in the
 Cow-

Cowgate : That the declarant first bargained for it himself ; but the declarant afterwards sent Ainslie, who bought it for five shillings and sixpence, or six shillings :

‘ That the goods taken from Inglis and

‘ Horner’s shop were put into the said two

‘ trunks, sent to the said Berwick carrier’s

‘ quarters, and to the Newcastle waggon-

‘ er’s, as mentioned in his former declara-

‘ tion : That the direction on the round

‘ trunk is, as he believes, of the hand-wri-

‘ ting of Ainslie ; and the direction upon

‘ the other of the hand-writing of Brown,

‘ of which he is certain.’

F O U R T H

FOURTH DECLARATION

O F

G E O R G E S M I T H,

Taken before the Sheriff, at Edinburgh, the 17th
July 1788.

Declares, That, on the 10th of March last, the declarant was carried to Brodie's yard and work-shop, by Alexander and George Williamson's, in order to point out a place where it was supposed some false keys, which Mr Brodie had, were hid : That, in the under work-shop, and in the bottom of a vent which was used as a fire-place for melting the glue, the declarant, when digging for the false key, found, a little under ground, a pair of pistols, wrapped in a piece of green cloth, which the said Alexander and George Williamson's
took

took into custody, and lodged in the Sheriff-clerk's office: That the declarant saw the said pistols and piece of green cloth yesterday in the Sheriff-clerk's office, and knew them to be the same that were found as above; and the reason of the declarant's knowing them was, that he had these pistols in loan from Mr Brodie for a considerable time; and the declarant had the said pistols with him when the Excise Office was broke into on the evening of the fifth of March last. Declares, That the same evening, after breaking into the Excise Office, the declarant delivered the pistols to Mr Brodie, being afraid of taking them to the declarant's house in case of a search. This, &c.

C O P Y

COPY of a LETTER from William Brodie, under the name of John Dixon, to Mr Matthew Sheriff, Upholsterer in Edinburgh.

Flushing, Tuesday 8th April, 1788, 12 o'clock forenoon.

My dear Friend,

Sunday the 23d ult. I went on board a ship cleared out for Leith, but, by a private bargain with the Captain, was to be landed at Ostend. I have been on board ever since the 23d. Most of the time we lay aground a little below Gravesend, owing to thick weather and cross wind. We are obliged to land here; but this afternoon I will set off, by water, for Bruges, and then for Ostend, (so I begin my travels where most gentlemen leave them off,) where I shall remain,

remain, for some time at least, until I hear from Mr Walker ; and, indeed, I will require three weeks to recruit ; for I have suffered more from my fore throat than sufficient to depress the spirits of most men. There was for twenty days I did not eat ten ounces of solid meat ; but thank God I am now in a fair way. My stock is seven guineas ; but by I reach to Ostend will be reduced to less than six. My wardrobe is all on my back, excepting two check shirts and two white ones, one of them an old rag I had from my cousin * * * * *, with an old hat (which I left behind), my coat an old blue one, out at the arms and elbows, I also had from him, with an old striped waistcoat, and a pair of good boots. Perhaps my cousin judged right, that old things were best for my purpose. However, no reflections : He is my cousin, and a good prudent lad, and showed great anxiety for my safety ; rather too anxious, for he would not let me take my black coat with me, nor Mr * * * * 's great coat,

which

which makes me the worfe off at prefent ;
 —but I could not extract one guinea from
 him, although he owes me twenty-four
 pounds for three years paff. He turned
 me over to Mr Walker, who fupplied me
 with twelve guineas. He is a gentleman
 I owe much to. I wifh I may ever have
 it in my power to fhew my gratitude to
 him and Mr *****. Had ***** been in
 my place, and me in his, my purfe, my
 credit, and my wardrobe, my all, fhould
 have been at his difpofal. However, let
 not this go farther, left it fhould have an
 appearance of reflection upon a worthy
 man. He cannot help his natural temper.

I would have wrote to Mr ***** ; but,
 for certain reafons, I believe it is not pro-
 per at prefent. Please to communicate this
 to him. And I beg that every thing may
 be fent to me that you, Mr ***** , and my
 fifters, may think ufeful to me, either in
 wearing apparel, tools, or even a fmall af-
 fortment of brafs and iron work. Please
 fend

send my quadrant and spirit level: They lie in a triangular box in my old bed-room. My brass cased measuring line, and three foot rule, my silver stock buckle, it is in the locker of my chest, and my stocks, they will save my neckcloths. If my sister pleases to send me some hand towels, they will be serviceable to me, whether I keep house or a room.

I most earnestly beg of Mr ***** that my remittances be as liberal as possible; for without money I can make but a poor shift;—for, you must think, my days for hard labour is near expiring, although, with my constitution, I may be able to carry on business for many years, and perhaps with success.

I have not yet received the trunk with my shirts and stockings, but will write Mr Walker to forward it to Ostend, where I will be under the necessity of buying some things. And I hope by the time I come

to New York I will have some things waiting me there. Whether it is best to send them by the Clyde or Thames, you and Mr ***** will judge best. And I hope to have a long letter from each of you, and one from my sister ***** ; and your's will include your wife's. They may be put in with my things, and any other letters my friends are pleased to send. Direct for Mr John Dixon, to the care of the Rev. Mr ——— Mason, at New York. I am not sure of settling there ; but will make for it as soon as I can.

I have no more time, the boat just going off for Bruges or Ostend. I am,

Dear Sir,

Your's for ever,

(Signed) *John Dixon.*

Wrote on the back thus :

Let my name and destination be a profound secret, for fear of bad consequences.

COPIES

COPIES OF TWO LETTERS

*Upon One Sheet of Paper, from William
Brodie to Michael Henderfon.*

Thursday, 10th April 1788.

Dear Michael,

I embrace this opportunity of writing you; and I make no doubt but it will give you, Mrs Henderfon, and a few others, satisfaction to hear that I am well.

Were I to write you all that has happened to me, and the hair-breadth escapes I made from a well-scented pack of blood-hounds, it would make a small volume.

I left Edinburgh Sunday the 9th, and arrived in London Wednesday the 12th, where I remained snug and safe in the
house.

house of an old female friend until Sunday 23d March, (whose care for me I shall never forget; and only wish I may ever have it in my power to reward her sufficiently), within 500 yards of Bow-street. I did not keep the house all this time, but so altered, excepting the scar under my eye, I think you could not have *rapt* * to me. I saw Mr Williamson twice; but, although countrymen commonly shake hands when they meet from home, yet I did not choose to make so free with him, notwithstanding he brought a letter to me: He is a clever man, and I give him credit for his conduct.

My female gave me great uneasiness, by introducing a *flash man* to me, but she assured me he was a true man, and he proved himself so, notwithstanding the great reward, and was useful to me. I saw my
picture

* This is what is called *flash* language, and means *swore* to me.

picture * six hours before, exhibited to public view; and my intelligence of what was doing at Bow-street office was as good as ever I had in Edinburgh. I left London on Sunday 23d March, and, from that day to this present moment, that I am now writing, have lived on board a ship; which life agrees vastly well with me. It is impossible for me at present to give you my address, but I beg you will write me, or dictate a letter to Thom, and let it be a very long one, giving me an account of what is likely to become of poor Ainslie, Smith, and his wife; I hope that neither you, nor any of your connections, has been innocently involved by those unfortunate men, or by that designing villain Brown; I make no doubt but he is now in high favour with Mr Cockburn, for I can see some strokes of his pencil in my portrait. May
God

* This means the description of him which was inserted in all the Edinburgh and London Newspapers, and was very minute and particular.

God forgive him for all his crimes and falsehoods. I hope in a short time to be in Edinburgh, and confute personally many false aspersions made against me by him and others. Write me how the main went ; how you came on in it ; if my black cock fought and gained, &c. &c. As I can give you no direction how to write me, you'll please seal your letter, give it to Robert Smith, and he will deliver it to my sister, who will take care that it be conveyed safe to me, wherever I may happen to be at the time ; for I will give such directions, that every thing that is sent me shall be forwarded from place to place, until it come to my hand. I have lived now eighteen days on board of ship, and in good health and spirits, although very bad when I came on board, having my tongue and throat in one ulcer, not a bit of skin upon either, and the medicine I took in my friend's, and by her direction, (for she is one of experience), just beginning to operate ; but I found it necessary, at all events, to remove ; so I under-

underwent a complete salivation on board ship. During all my trials since I left Edinburgh, my spirits, nor my presence of mind, never once forsook me; for which I have reason to be thankful. My best compliments to Mrs. Henderson; and I will order payment of the two guineas as soon as I have accounts from the gentleman I have intrusted with my affairs; let her not be anxious about it, for, if I live, it shall be paid. Dear Michael,

Dear Michael,

I am very uneasy on account of Mrs. Grant and my three children by her; they will miss me more than any other in Scotland; may God, in his infinite goodness, stir up some friendly aid for their support; for it is not in my power at present to give them the smallest assistance; yet I think they will not absolutely starve in a Christian land, where their father once had friends,

friends, and who was always liberal to the distressed.

I beg you will order the inclosed to be delivered into her own hand; and I will take it kind if Mrs Henderson will send for her, and give her good advice. I wish she may be enabled to keep what little furniture she has together.

I think she should endeavour to get her youngest daughter Jean sent to Aberdeen to her friends, where she will be well brought up, and I will order an yearly board to be paid for her, perhaps six pounds per annum; it will be an ease to Mrs Grant, and better for the child. My eldest daughter Cecill should be put apprentice to the milliner or mantua-making business; but I wish she could learn a little writing and arithmetic first. I wish to God some of my friends would take some charge of Cecill; she is a fine sensible girl, considering the little opportunity she has had

had for improvement. I have been now eighteen days on board, and I expect to land somewhere to-morrow. The ship rolls a good deal, and it is with some difficulty I get this wrote, and my paper being exhausted, I shall conclude this epistle. Please make my compliments to Mr Clark, and a few other friends, and, in particular, to Mr B*****; tell him I *glimed the scribe* * I had of him. He is a gentleman I have a great regard for. Pray do not forget writing me a long letter. I am,

Dear Michael,

For ever your's.

(Signed) W. B.

Pray do not show this scroll to any but your wife.

T

A

* This is another specimen of the *flash* language, of slang. And *glimed the scribe* means *burned the letter*.

A COPY of a LETTER or unsigned
*Scroll, in the hand-writing of William
 Brodie, and founded on in the Indict-*
ment, marked No. I.

My dear Sir,

By short instructions sent me when I left London, which I think were drawn up in my cousin *****'s hand, I was forbid writing to any one in Britain, Mr Walker excepted, for a year or two ; but this order, if necessary, I find it not easy for me to comply with ; for I must correspond with my friends in whatever part of the globe I am, and I hope they will do so with me, and write them when an opportunity offers. I have gone through much, in every sense of the word.

I wrote Mr Walker from this the 12th current. I received an answer the 18th, and wrote again the 23d current; and, upon receiving his next, I hope to be enabled to embark in the first ship for America, to whatever port she is bound, which will probably be Charlestown, South Carolina, as there is a ship lying-to for that port; and, notwithstanding the climate is very hot, and not so salutary to British constitutions, especially at the time I will arrive, which will be about the dog-days. I will settle there, if I think I can do better than at Philadelphia or New York. Longevity to me is now no object; but, at any rate, I will be at New York; and I hope to find there letters, and, if possible, some clothes and tools, otherwise I will be badly off indeed. It grieves me to hear my creditors were so rigorous hasty, but well pleased on hearing the deed and conveyance had the proper effect. I hope all my creditors will be paid, and a reversion, which can be no object to the Crown. Were an
 appli-

application made to the Solicitor, and, if needful, a supplication, in my name, to his mother, and uncle the Treasurer, perhaps it might be a means either of quieting or getting easier through the threatened suit with the Crown ; but this is only my idea. At any rate, if my clothes and tools must go to sale, a proper assortment of tools, put into my best chest, might be put up in one lot, and my wearing apparel and linens in another lot : They are worth more to me than any one ; and, I think, few in Edinburgh will bid for them, if known they are designed for me ; but if any one bids their value, in God's name let them have them, otherwise I hope they will be bought for me. I wish it were possible for me to know, before I left this, if I might expect them at New York ; if otherwise, I will be under an absolute necessity of laying out what little money may remain, after paying my passage, and clearing my board and lodging here, to my last shilling, and buying a few necessaries, otherwise I will land almost

almost naked; and, if possible, to reach a few tools, both of which, I am informed, are L. 50 *per cent.* dearer in America than here. I received from Mr Walker, in all, L. 12 : 16 : 0, and he would pay something for three days I slept in Mr ——'s. I am, at present, two guineas in debt to my landlord, and not a stiver in my pocket for four days past. This is the dearest place I was ever in.

I beg I may hear from you when at New York; and, if directed to Mr John Dixon, to the care of the Reverend Dr Mason, I will certainly receive it, (as I know no other name there to desire you to direct to); for I will certainly call there, whatever part I land or settle in, in expectation of letters, and, in particular, a long letter from you, in which, please answer the following questions without reserve. I am prepared to hear the worst. How does my dear sisters keep their health? I hope the shock of my departure, and what followed, has
not

not injured either of them in health. How did they stand it? Where does my sister ***** live? I hope there is no alteration in Mr Sheriff's friends to my dear *****.

If money is an object, it is all in his favour. How is Mr and Mrs ***** and Mr ***** to whom I am for ever much obliged for settling my passage: It was a deep cut, but the more I am obliged to him, and shall never forget it: He is a feeling and a generous gentleman. I am sorry I cannot say so much of my cousin ***** although he, too, was anxious for my off going. How does my uncle and Mr ***** keep their health? From his conduct and repeated expressions, I never had much reason to expect any thing from him, but now far less, although more needful. I believe few, at my age, ever went out more so. At present, I am destitute of every thing. I can put every article I have upon my back, and in my pocket. How does Mrs ***** and her son's family? Who were the most forward of my creditors

tors to attach? How does my affairs turn out in the whole? If R***** S**** is employed, has he been active and attentive? He would need to be looked after, although he may be useful; and any news or alterations relating to my friends that may have happened. What has been done, or likely to be done, with the two unfortunate men Smith and Ainslie, and the greater villain John Brown, *alias* Humphry Moore? Was John Murray, *alias* John Tasker, brought from England?

Whatever these men may say, I had no hand in any of their depredations, *excepting the last*, which I shall ever repent, and the keeping such company, although I doubt not but all will be laid to me. But let me drop this *dreadful subject*.

(Signed with the following initials)

S. W. T. L. R. S. J. M. J. S.

A

*A COPY of a LETTER or unsigned
scroll, in the hand-writing of William
Brodie, founded on in the Indictment,
marked No. 2.*

Pray write me what is become of Anne Grant, and how is her children disposed of. Cecill is a sensible, clever girl, considering the little opportunity she has had of improving. My dear little William will be, if I can judge, a hardy boy.

Jean is her mother's picture, and too young to form any opinion of.

What has become of Jean Watt ; she is a devil and a *****. I can form no opinion of Frank or his young brother ; but pray write how they are disposed of.

If

If you please, write me what is become of the two unhappy men, Smith and his wife, and Ainslie. Are they yet? Is their trial come on? and the greater villain John Brown, *alias* Humphry Moore? I shall ever repent keeping such company; and, whatever they may alledge, I had *no direct concern* in any of their depredations, excepting *the last fatal one*, by which I lost ten pounds in cash; but I doubt not but all will be laid to my charge, and some that I never heard of.

(The following is written at the foot of the page.)

I often went in a *retregard*. I have been all my life in a *reteregard* motion.

(What follows is written on the other side.)

Does Mr Martin stand his bargain? Is any of my late property sold? Who is making out my accounts? Has R*****

U

S*****

S**** been useful and active in my affairs ?
He is double, and would need looking
after.

Perhaps, in course of making out and settling my accounts, some questions may occur that I may solve. If there is any such, please write them down, and I will answer them in course. Has any settlement taken place with Mr Little ? I am afraid my affairs will be a laborious task to you ; but I hope all my creditors will be paid, and a reversion. If all my moveables is not yet sold, I beg my clothes and linen, and a set of useful tools, may be procured for me : They are worth more to me than another. I wrote more fully some time ago to Mr Walker on this head, and also Mr Sheriff, the 8th April ; but I know not if he received it. Pray let me know if he did, and how he stands affected towards me. Whatever be his sentiments, I shall always esteem him, and regard him as my brother ; but I shall never write another
friend

friend until I hear from you, and have your opinion how I and they will take it. Pray did Captain Dent ever make any discovery who I was when he arrived at Leith.

(Signed with the following initials)

J. L. J. M. R. S. J. S.

*A COPY of a LETTER from
Mess. Lee, Strachan, and Co. Merchants
in London, to Mess. Emanuel Walker and
Co, Merchants in Philadelphia.*

London, May 1. 1788.

Mess. Emanuel Walker & Co.

S I R S,

You will please to supply the bearer,
Mr John Dixon, with cash to the amount
of

of fifty pounds Sterling, taking his bill on
Mr William Walker, attorney, in the Adel-
phi, London, for the same, which will be
duly honoured, and oblige,

S I R S,

Your most obedient

Humble servants,

Lee, Strachan, & Co.

*Mess. Emanuel Walker
and Co. Philadelphia.*

A C O P Y

O F T H E

D E C L A R A T I O N

O F

WILLIAM BRODIE, late Cabinet-maker in
Edinburgh,

Taken before ARCHIBALD COCKBURN, Esq; Sheriff
Depute of the County of Edinburgh, upon the 17th
day of July, 1788 years.

Declares, That he does not at present
recollect the name of the vessel in which
the declarant went from the river Thames
to Holland in the month of April last;
that is, in which he arrived in Holland in
April last: That, before he left the vessel,
he gave some letters, at present he does not
recollect the number, written by himself,

to

to one Geddes *, a passenger on board the vessel. And being shown a letter directed to Michael Henderson, signed W. B. dated Thursday the 10th of April last, declares, That he cannot say that the letter was *not wrote* by him, and given to Geddes, And being interrogated, If one of the letters given to Geddes was not directed to Mr Matthew Sheriff upholsterer in Edinburgh, and signed John Dixon, dated Flushing, Tuesday the 8th of April 1788 ? declares, That the declarant cannot give any positive answer to that question ; and he does not suppose he would have signed any letter at that time by the name of John Dixon, especially as he had wrote other letters at the same time, and given them to Geddes, signed by his initials W. B. Declares, That the declarant, when taken into custody at Amsterdam, on the 26th of June last, went by the name of *John Dixon*. Declares, That the declarant first became acquainted

* Vide Geddes's evidence, page 34.

quainted with George Smith in Michael Henderson's, a long while ago, when Smith was indisposed, and bedfast there: That the declarant has been in George Smith's house in the Cowgate. And being interrogated, declares, That he cannot say positively whether he was in Smith's house any day of the week before the declarant left Edinburgh, which, to the best of the declarant's recollection, he did upon the *ninth* of March last, and *upon Sunday*, as he thinks. Declares, That, having received a message that some person in the jail of Edinburgh wanted to see him, he went there, and found it was either Smith or Ainslie who had been inquiring for him; but the declarant, when going there, was told by the keeper, That neither Smith nor Ainslie could be seen; and that this was the night preceding his departure from Edinburgh. Being interrogated, If reports had not been going of the Excise Office having been broke into the week before the declarant left Edinburgh, if he, the declarant, would

would have taken that step? declares, That it was not in consequence of that report that he left Edinburgh ; but that the declarant being acquainted with Smith and Ainslie, then in custody, did not know what they might be induced to say to his prejudice, was the cause of his going away. Declares, That the declarant has frequently been in company with John Brown, *alias* Humphry Moore, as is reported to be his real name, Andrew Ainslie, and George Smith, and drank with them. And being shown three letters, one dated Thursday, 10th April 1788, directed to Mr Michael Henderson, Grass Market, signed W. B. ; another, dated Flushing, Tuesday 8th April, 1788, directed to Mr Matthew Sheriff, uphoisterer in Edinburgh, and signed John Dixon ; another, dated Thursday, 10th April, 1788, directed to Mrs Ann Grant, Cant's Close, Edinburgh, signed W. B. and desired to say, whether or not the said three letters are holograph of the declarant? declares, That he *does not incline* to give any positive

positive answer, the appearance of writing varies so much. This, &c.

Here the *Lord Advocate* declared, that the Proof upon the part of the Prosecutor was finally closed.

The Court then desired the Counsel for Mr Brodie to proceed to their Exculpatory Evidence.

X

EXCUL-

EXCULPATORY PROOF

for Mr Brodie.

LIST of WITNESSES to be adduced in Ex- culpation of William Brodie.

1. Robert Smith wright in Edinburgh,
late foreman to the said William
Brodie.
2. George M'Intosh, also wright, and late
journeyman to the said William Bro-
die.
3. John Niel, also wright, and late jour-
neyman to the said William Brodie.
4. Arthur Giles wright in Edinburgh.
5. William Watson wright in Canongate.
6. William Retson, or Reston, nailer,
Portsburgh.
7. James Cargill ironmonger, Edinburgh.
8. Alexander Miller ironmonger there.
9. George

9. George Burton ironmonger there.
10. James Goldie ironmonger there.
11. Daniel MacLean, waiter to William Drysdale vintner in Edinburgh.
12. George Lees coachmaker there.
13. Alexander Fergusson dyer there.
14. Patrick Taylor smith there.
15. Charles MacLeod, apprentice to Patrick Taylor.
16. Agnes Finlay, spouse to Michael Henderson stabler, Grassmarket.
17. Alexander MacKay, inner turnkey in the tolbooth of Edinburgh.
18. James Reid indweller in Edinburgh, and present prisoner in the tolbooth.
19. Alexander Brodie baker, Nether-Bow.
20. James Murray sheriff-officer.
21. Helen Alison, spouse to William Wallace mason, Libberton's wynd.
22. Jane Watt residenter there.
23. Peggy Giles, servant to ——— Grahame publican at Mutton-hole, near Edinburgh.
24. Matthew

24. Matthew Sheriff upholsterer in Edinburgh,

Under protestation to add and aik,

(Signed) *Alexander Wight,*
for the Pannel.

The Counsel for Mr Brodie here observed, that the object of the exculpatory proof was to show, that, on Wednesday the 5th of March last, the night on which the robbery of the Excise was committed, Mr Brodie was otherways employed the whole of that afternoon and evening, which, if established, excluded the possibility of his being concerned in that robbery.

W I T N E S S I.

Matthew Sheriff upholsterer in Edinburgh, being then called, the *Lord Advocate* objected to this witness, as standing in the relation of brother-in-law to Mr Brodie;
and

and submitted to the Court whether, under such circumstances, he ought to be examined.

Mr Wight answered, That the witness standing in the relation he did to Mr Brodie, by no means disqualified him from being an evidence;—it might, indeed, affect his *credibility*, if his testimony stood contradicted by other proofs, but could not affect his *admissibility*.

The Court allowed the witness to be examined, reserving the credibility of what he said to the Jury.

Mr Sheriff was then examined, and said, That, on Wednesday the 5th of March last, the witness dined with Mr Brodie in his own house; That he thinks he went there to dinner about a quarter after three o'clock *; and Mr Brodie was then at home:

* As Brown, Ainslie, and Smith's maid, all concur that

home: That there were present at dinner Mr Brodie, his sister, and aunt, the witness, and a gentleman that he did not know, nor did he remember his name, or knew any thing about him: That the witness drank tea in Mr Brodie's, and continued there till within a few minutes of eight o'clock at night: That Mr Brodie was present during all the time; and, when the witness came away, he left Mr Brodie in his own house: That Mr Brodie was dressed in lightish coloured or grey clothes.

On cross examination by the Counsel for the prosecution, said, That he had no particular circumstance to direct his remembrance

that Mr Brodie was in Smith's house on the *afternoon* of the 5th March, it might appear a contradiction to this evidence; but Brown has fixed that it was very early in the afternoon, some time after two o'clock, but could not say that it was after three; so that it is evident the meeting in Smith's which they alluded to, was between two and three o'clock, and before this witness came to dine with Mr Brodie.—
Vide Brown's evidence, page 83.

brance as to the exact time of his leaving Mr Brodie's house, but general recollection: That he could not be positive as to the precise time; but, when he went home to his own house in Bunker's-hill, his clock wanted some minutes of eight *: That, on the day following, (Thursday), Mr Brodie dined with the witness, and was in his house from three o'clock till about eleven o'clock at night †: That the reason of his remembering the days so accurately, is from Mr Brodie's

* From Mr Brodie's house in Brodie's close, Lawnmarket, to Bunker's-hill, is above half-a-mile; and Mr Sheriff was home some minutes before eight o'clock.

† Peggy Giles, Jean Watt's servant, said Mr Brodie was in her mistress's house on Thursday afternoon; but this may have been between two and three o'clock, which she called afternoon, in the same way as Smith's maid said that the first meeting in her master's was on the Wednesday afternoon, which, by Brown's evidence, is fixed to have been before three o'clock.

Brodie's having left Edinburgh on the Sunday following the 9th of March.

WITNESS II.

Jean Watt, residenter in Libberton's wynd, Edinburgh.—Before proceeding to this witness, the *Lord Advocate* questioned her very closely, whether or not she was married, or had ever been married? which she answered in the negative *. She then said, That she was well acquainted with the prisoner, Mr Brodie; remembered that, on Wednesday the 5th of March last, he came to her house at eight o'clock at night, just as the bell was ringing: That he staid there all night, and was not out from the time he first came in till near nine o'clock next morning: That they went early to bed, about

* A report having been circulated, that Mr Brodie was married to this witness in prison, which, if true, would have disqualified her from being a witness, it seems to have been the object of the Lord Advocate's questions to ascertain the fact.

about ten o'clock, as Mr Brodie complained of being unwell: That he slept with the witness; she had a family of children to him: That she was positive as to the day and hour, and gave as her reason, that Mr Brodie never slept in her house after: That she did not see Mr Brodie from the time he left her house on the *Thursday morning* till the *Saturday* after, when he called; and, on the *Monday* following, she heard that Mr Brodie had gone away on the *Sunday*.

WITNESS III.

Peggy Giles, some time servant to Jean Watt, the preceding witness,—said, That she knew the prisoner, Mr Brodie: That he frequently slept at her mistress's house, remembered that he came there on Wednesday evening the 5th of March last, just as the eight o'clock bell was tolling on the town bell of the Tron Church. Being asked, where the Tron Church was? she answered,
Y ed,

Parliament Close *: That, soon Brodie came in, the witness was for some beer, bread, and cheese, but about ten minutes; and, when she returned, Mr Brodie was still in the house: That her mistress and Mr Brodie supped early, about half an hour after eight o'clock: That Mr Brodie staid all night, and was in bed next morning when she got up: That she put down a wash-basoon, and some water for him, and he went away about nine o'clock: That she saw Mr Brodie in the house twice again on the same day, *Thursday* †, viz. once in the forenoon, and once in the afternoon; and she saw him again there on the Saturday night.

W I T.

* The Tron Church is near a quarter of a mile from the Parliament Close.

† This is inconsistent with Jean Watt's evidence, as she said that Mr Brodie was not in her house at all on *Thursday*, and not till Saturday.

WITNESS IV.

Helen Alison, spouse to William Wallace in Libberton's wynd,—remembered that, on Thursday morning the 6th of March last, as she was standing at her own door, at the foot of Jean Watt's stair, she saw Mr Brodie come down stairs: That the witness had a boy of Mr Brodie's, about six years of age, by the hand; and, as Mr Brodie passed, he gave the child a halfpenny, and clapped him on the head: That the boy told the witness, that Mr Brodie had been in their house all night; but that he was not well of a sore throat: That this happened a little before nine o'clock in the morning; and the reason why she recollected the day and hour so particularly was, that she had the day before been at the market, and bought some shoes for her husband and children, one pair of which she had lost or mislaid, and was then standing at the door waiting her husband's coming

ming home to breakfast, to see if he had laid them by any where : That the witness told the above circumstance respecting Mr Brodie to one Murray, a sheriff-officer, some days after this, when he was searching Mrs Watt's house for Mr Brodie.

WITNESS V.

James Murray sheriff-officer,—remembered that, on Tuesday the 11th of March last, he went to search Mrs Watt's house, under the authority of the Sheriff's warrant, and to bring her before the Sheriff for examination : That he found nothing suspicious in the house ; and, while he waited till Mrs Watt should put on her clothes to accompany him to the office, he heard Helen Alison, the preceding witness, say to Mrs Watt, ' Who would have thought, ' when I saw Mr Brodie coming down ' your stair on Thursday morning, when ' he gave his child a halfpenny, that he ' would have been suspected of such a thing

as this? In which observation the witness and Mrs Watt agreed with Mrs Allison.

WITNESS VI.

James Laing, writer in the Council Chamber,——remembered of a process brought before the Magistrates, at the instance of one Hamilton, a chimney-sweeper in Portsburgh, against the prisoner Mr Brodie, for using loaded dice; and the witness thought there were some proceedings in that process within these six months. Being asked, If he knew Mr Brodie to be a gambler? answered, That he never gambled with him.

WITNESS VII.

Robert Smith, some time foreman to Mr Brodie,——said, That Mr Brodie kept a box with picklocks in a room off his shop, which were often used in the course of
their

their employment as cabinet-makers and house-carpenters; and that all the workmen had access to it: That he believed Mr Brodie used spring-saws for cutting the spurs of game-cocks: That these saws are sometimes used by cabinet-makers in the way of their business for cutting brass ferules, and other things of that kind. And being shown the keys libelled on, said, He never remembered to have seen any keys of that kind before.

Here the exculpatory evidence was closed, a few minutes after one o'clock of the morning of the 28th of August:

The *Lord Advocate* then rose, and addressed himself to the gentlemen of the JURY: He said, That, after the very long and fatiguing sederunt which they had already undergone, he would endeavour to
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discharge his duty in as few words as possible ; and, from the way in which the evidence had turned out, he did not suppose that it would be necessary for him to dwell long upon the import of it to so sensible and discerning a Jury.

The situation of the unfortunate prisoners at the bar, excited painful sensations in his mind, and it would doubtless have the same effect upon the gentlemen of the Jury ; but public justice required that these feelings should be repressed. If the prisoners were really guilty of the crime charged in the Indictment, it was of little consequence what their former situations in life had been. One of them (Smith) was a stranger in this country, and the history of him was little known, farther than his own declarations had informed ; and his appearance bespoke him to be a person in an inferior station of life ; and, although he had put on the appearance of following a lawful employment, by taking a shop in this city,

city, there was reason to believe that this was only meant to prevent suspicion of what he was really following, and that he might escape public observation.

The other prisoner, Mr Brodie, was of a very different description : His situation was far above the reach of want, and, consequently, of temptation : He had a lawful employment, which might have enabled him to hold his station in society with respectability and credit ; that he had been more than once officially at the head of his profession, and a member of the City Council : If, therefore, an accession to the crime libelled had been brought home to him, his situation, in place of alleviating his guilt, was a high aggravation of it : It could be no apology for him that he had been seduced by bad company, and had example ; on the contrary, his associating with such company was, of itself, a high offence for a man in Mr Brodie's station.

His

His Lordship said, that it was totally unnecessary to go over the evidence tending to show that the Excise Office was actually robbed in the manner mentioned in the Indictment, as he supposed that was a fact which would not be disputed.

His Lordship then said, that the proof, so far as it regarded the conviction of Smith, was so completely conclusive, that no possible doubt could be suggested with regard to his guilt: His own declarations were clear, uniform, and consistent, and were fully corroborated by all the other evidence, both direct and circumstantiate, that had been led; and therefore he would not consume the time of the Jury, and of the Court, by going over it, as it must have already carried full conviction to their minds.

With regard to the other prisoner, Mr Brodie, his Lordship said, that the crime libelled appeared to be equally well substan-

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tiated against him ; but, as the circumstances of his case were somewhat different from the other, he would beg leave to recapitulate the heads of the evidence, so far as it appeared to him to verify the charge.

As Mr Brodie's counsel had objected so strongly to the *admissibility* of certain evidences, his Lordship said he would first consider the proof, independent altogether of these exceptionable parts of it. That Mr Brodie was very intimate with Smith, Ainslie, and Brown, (who, by their own confessions, had committed the robbery libelled), could not be doubted ; it was admitted by himself in his letters and declaration, and was confirmed by the evidence of Smith's maid, to whose credibility no objection had been made, and who had said that she had seen them often together in her master's house. This witness had also fixed, that, about the time the robbery was committed, the two prisoners, along with Brown and Ainslie, were in Smith's house

in

in the dusk of the evening; that they were in the upper room altogether, and had some cold fowl and fresh herrings: That she had seen Mr Brodie that afternoon, when he had on light coloured clothes; and that, when he came in the evening, he had on old-fashioned black clothes, which struck her as a particular circumstance, and she had mentioned it to her mistress.

Mrs Smith, had she been allowed to be examined, would have corroborated this witness in every particular; but that was unnecessary, as the facts the witness had deposed to were not only probable in themselves, but confirmed, to the extent he had mentioned, by all the other evidence, and also by Smith's declarations; which last, his Lordship said, he did not mean to found upon as evidence against Mr Brodie, but it was a curious fact.

Mr Brodie's letters, too, afforded, if not a direct confession of the crime libelled, at least

least such a strong suspicion of it, as, joined to his other conduct, excluded the possibility of innocence: For he had said, in two of these letters, that he had no *direct* accession to the depredations of Smith, Brown, and Ainslie, *excepting the last fatal one*; which expression could only apply to the robbery of the Excise; for it had happened on the Wednesday evening, and Brown gave information of it on the Friday evening immediately after. It was, therefore, in all probability, the last of the depredations of this dangerous combination; and Mr Brodie's having applied the expression *fatal* to it, identified it beyond all doubt.

The suspicions against Mr Brodie, however, did not rest here; for it had been proved, that, on the evening that Smith and Ainslie were apprehended, he had attempted to get access to them in prison, and was refused: That, early next morning, he sent for his foreman, and question-
ed

ed him as to what he had heard concerning them, and pretended that he was going to the country : That a conversation passed at this time between Brodie and his foreman, which afforded a very strong suspicion of Mr Brodie's guilt : That he then made a clandestine escape from Edinburgh, and reached London in three days : That he was concealed there for several weeks ; and admits, in one of his letters, that he knew Mr Williamson was in search of him, but he did not choose an interview : That he was, under cloud of night, carried on board a ship cleared out for Leith ; which ship went out of her way with no other intention but to land him at Flushing : That he had changed his name to *John Dixon*, and had written letters to people in Edinburgh under that false signature, explaining his whole future operations ; in consequence of which letters he had been traced, apprehended, and brought to trial. His Lordship said, that he had heard no cause assigned for this conduct of Mr Brodie's, excepting

cepting that of the process at the chimney-sweeper's instance against him, for using loaded dice. But no man could believe this to have been the cause of his elopement : The process had depended against him for months before this time ; and no step had been taken in that process that could alarm him at this critical time : Besides, Mr Brodie, in his declaration before the Sheriff, had not assigned this as the cause of his flight. He had said, that, as he was intimate with Smith and Ainslie, he was afraid that they would accuse him of being concerned with them in robbing the Excise Office. He had not so much as mentioned the ignominious defence so set up for him ; but his Counsel foresaw that it would be necessary to account for his conduct in some shape or other, and no other appearance of defence occurred but this process. It was impossible, however, for the gentlemen of the Jury to believe this story ; and, indeed, it was impossible to assign any cause for Mr Brodie's conduct, consistent with
his

his innocence of the crime charged against him.

His Lordship also adverted to the circumstances of suspicion arising from the different searches of Mr Brodie's house, and articles there found; such as the pistols hid under ground, the dark lanthorn, &c. That the pistols were found out by the other prisoner, Smith, and were identified to have been used on the occasion of the robbery.

That all these circumstances, taken together, afforded such a chain of consistent and connected evidence, that it was impossible to resist the conviction arising from it; and he contended, that it was sufficient to establish Mr Brodie's guilt, independent altogether of the *direct* evidence of Brown and Ainslie.

His Lordship here candidly admitted, that the *credibility* of these witnesses was liable

able to suspicion; and, that if the proof rested upon their evidence alone, he would not call upon the gentlemen of the Jury to find the prisoners guilty upon it;—but, in so far as their evidence was corroborated by the general tenor of the other unexceptionable parts of the proof, they were entitled to credit.

His Lordship said, that Brown and Ainslie were so consistent with each other, and with the whole other evidence adduced, both real and circumstantial, that he had not been able to discover a single discrepancy in the whole, excepting where Brown and Ainslie had said, that, after the robbery, they did not either of them see Brodie again that evening, but Smith's maid had said, that they all met again in Smith's house, and supped there, and that Brodie supped along with them. This, however, his Lordship said, did not appear to be a fact of any importance, or that tended to discredit the evidence of either
of

of the witnesses, as it was evident Smith's maid had confounded the first and second meeting together.

That, with regard to the proof of an *alibi*, which had been attempted, his Lordship said, it was exceedingly defective and inconclusive; and he had never seen it resorted to but in the most desperate cases; it was, therefore, always subject to strong suspicions, more especially when the *alibi* is within a few minutes walk of the place where the crime was committed, and deposed to by witnesses at a great distance of time: That Mr Sheriff, Brodie's brother-in-law, was by no means an unexceptionable witness: That he was brought forward *singly* to prove a fact, which, if true, Mr Brodie could be at no loss to establish by other unexceptionable evidence. Sheriff himself had admitted, that, on the day he dined with Mr Brodie, there were other persons at table, particularly a gentleman, whom he did not know, and could not re-

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member

member his name. Why was not this gentleman brought forward on this occasion? Or, why was not some of Mr Brodie's servants brought forward to corroborate Sheriff's evidence? which, his Lordship said, it appeared to him, stood in need of it: But, taking it as it was, it by no means affected the credibility of the Prosecutor's evidence; for Sheriff had said, that he left Brodie a little before eight o'clock, and both Brown and Ainslie take him up much about the same time; so that there was here no inconsistency whatever.

That, with regard to Jean Watt, and her servant, they stood in a situation that affected their credibility very much; particularly Watt, who, by her own evidence, appeared to be a woman of an abandoned character, had a family of children to Mr Brodie, and was denominated by him, in one of his letters, by the appellation of a *devil*. This witness, and her maid, had no doubt concurred most minutely in a very

very extraordinary fact, which, if it could be believed, amounted to a falsification of the whole other evidence, viz. that Mr Brodie came to Watt's house just at eight o'clock, as the bell was ringing, and did not leave the house again till nine o'clock next morning: But, although these two witnesses had agreed in the day, the hour, and even the minute of Mr Brodie's coming to Watt's house on the 5th of March, yet, when they came to be cross questioned, they did not agree even in days; for Jean Watt said, that she did not see Brodie from the Thursday morning, at 9 o'clock, till the Saturday afternoon following; yet her maid said, that he was twice in the house on the *Thursday*, both in the *forenoon* and *afternoon*; and yet Sheriff said, that Brodie was in his house on the Thursday, from three o'clock in the afternoon till eleven o'clock at night; and none of them had condescended upon any circumstance that led them to fix his visit at their house to be the Wednesday night, but his subsequent

quent elopement on the Sunday following, which might apply to any other night of the preceding week as well as Wednesday night. —His Lordship said, that he had no reason to dispute, nay, he believed, that Mr Brodie slept in Watt's house that night; but the bell which the witnesses heard ringing when he came there, if they heard a bell at all, must, from the other evidence, have been the ten o'clock bell.

Such being the characters of the witnesses brought to prove this *alibi*, and such their inconsistency, his Lordship said, he would leave the whole to the consideration of the Jury.

Mr John Clerk, as Counsel for the Prisoner, Smith, then rose, and observed to the Jury, that his unfortunate client was in such
reduced

reduced circumstances, that he had not been able to make those exertions in procuring either Counsel or evidence, which the more opulent prisoner had done: That he was a stranger in this country; and whatever was favourable in his character or conduct was unknown; while, on the other hand, every thing that tended to blacken his character, and fix guilt upon him, was brought forward.

The evidence, so far as regarded Smith, was two-fold. In the *first* place, the parole testimony of the witnesses adduced for the prosecutor, and the relative circumstances; and, *secondly*, the supposed real evidence arising from his own declarations.

With regard to the *first* of these,—Mr Clerk was proceeding to state to the Jury, that he would be able to show, that evidence had been admitted in this case which was both *improper* and *inadmissible*; the Lord Justice Clerk, however, interrupted him,

him, and said, that, as the Court had determined the *admissibility* of the whole evidence led, it was reflecting upon the judgment of the Court now to call it in question.

Mr Clerk, however, insisted, that he was not then under the correction of the Court: That he was addressing himself to the Jury, who were judges both of the law and of the fact.

After some farther altercation on this head, it was agreed, that as the Dean of Faculty would have occasion to occupy that ground, and to state the import of the parole testimony to the Jury, it would be altogether unnecessary to anticipate what he had to say on that head.

With regard to Smith's own declarations founded on, it was very true that they admitted his accession to the crime libelled; but they, at the same time, also admitted
many

many other acts of criminality, which no man in his right senses could be supposed to accuse himself of ; it was therefore reasonable to suppose that these declarations were emitted under some temporary fit of frenzy, or stupid suspension of his faculties, and that his cooler judgment had rejected the account given by him when in that situation, as he had that day pleaded not guilty.

These declarations, however, taking them as they stood, were altogether extrajudicial, and admissible only as adminicles of evidence, not as *legal* proof of the fact ; and, if it should be shown, to the satisfaction of the Gentlemen of the Jury, that the parole and circumstantiate evidence was either contradictory, inconsistent, or incredible, they would lay very little stress upon the extrajudicial confessions of the prisoner, Smith.

Here

Here Mr Clerk insisted at some length on the discrepancy between the evidence of Middleton and Murray with regard to the place where the key, iron-crow, and curling irons, were found, and what passed at the time; but, as that discrepancy has been explained in the notes upon the evidence of these witnesses, we think it unnecessary to state the debate at length.—Mr Clerk concluded with hoping, that the Jury would not find sufficient legal evidence of Mr Smith's concern in the robbery libelled, and therefore that they would return a verdict finding him not guilty.

The Dean of Faculty *, who, with indefatigable attention, and a most brilliant display

* We applied to the Dean of Faculty for an account of his speech upon this occasion, which was truly

play of ability, had gone through the whole business of the trial, at three in the morning rose and addressed himself to the gentlemen of the Jury, upon the part of Mr Brodie.

He

truly able and eloquent, and displayed an acuteness and ingenuity which it would be difficult to do justice to; but, by a polite letter from himself, we were informed that he spoke *extempore* from the evidence that had been led, and he had not a syllable in writing;—that, as he was so much immersed in business, and was to leave town next day, it was not in his power to attempt setting down any thing from memory.

We have therefore, unassisted, endeavoured to give the best account, from memory, of what the Dean said that we possibly could, after so long and fatiguing an attendance.

The evidence being now fully before the Public, it is thought very immaterial to give the speeches at great length in this last stage of the Trial; but no point of any consequence will be omitted.

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He observed, that the situation of his unfortunate client presented to the world a most astonishing moral phaenomenon !— That a man, descended from an ancient and respectable family ; who, from the state of his affairs, made up by himself, was in opulent circumstances, and very far from indigence and temptation ; who, for a long series of years, had maintained an irreproachable character in society, and had often filled offices of honour and trust among his fellow citizens, the duties of which he had discharged with attention and fidelity : That *such* a person should even be *suspected* of the crime charged in the Indictment, was a most extraordinary fact. If it was true, he allowed, that he was of all men the most culpable. But who could give credit to such a charge as was here exhibited ? for, as an eminent Poet of our own country, who is still alive, had expressed himself,

The

The needy man who has known better days,
 One whom distress had spited at the world,
 Is he whom tempting fiends would pitch upon
 To do such deeds, as make the prosperous men
 Lift up their hands, and wonder who could do
 them *.

It being therefore highly incredible that Mr Brodie would have all at once departed from his integrity, and leagued with abandoned men in the commission of such guilty and atrocious crimes as were now charged against him, it would require a very strong and unsuspicious, proof, indeed, to fix guilt upon him ; and, if the parts of Mr Brodie's conduct which appeared to infer suspicions against him could be ascribed to any other cause, the gentlemen of the Jury would lay these appearances altogether out of their *view* in judging of the import of the evidence.

To

* Old Norval's speech in Douglas.

To a certain extent, the Dean of Faculty said, he was obliged to admit the *shame*, although not the *guilt*, of his unfortunate client. From an early period of his life, he had had a most unhappy propensity to gaming, which, it appeared, he had indulged to a very great height. To this vice he had reason to ascribe the distressing situation in which he then stood : It had subjected him to the lowest and most unprincipled connections, persons who had attempted to sacrifice to him their own safety. In the course of indulging this propensity, the prisoner, Brodie, met with a professed Gambling Club, almost every night, at a house which was the common receptacle of all descriptions of mankind ; and there the dice, like death, levelled all distinctions ! This destructive seminary of vice ought, for the good of society, to be
RAZED TO THE FOUNDATION !

The unfortunate prisoner, Mr Brodie, was by no means singular in his attachment to that vice; nor was it at all confined to the lower stations of life: People of the highest rank scrupled not, in the course of their gambling, to mix with highwaymen and pick-pockets, and to descend to practices of chicane and cunning, which, in any other situation, they would themselves abhor. It was but the other day, that a gentleman at Brighthelmston*, re-
puted

* The particulars of this story are as follows:

Major ——— had won a considerable sum of money the night before, and in such a manner as to lead to suspicion; two gentlemen, therefore, were determined to watch him, and, for this purpose, planted themselves the next night on each side of his chair, when, taking a proper opportunity, one of them seized his hand with the dice in it; he grasped it close, and would not part with them; the other seeing this, knocked him down; and, in the fall, the Major drew with him the first gentleman, who, however, would not let go his hold till he wrested the dice from him.

He

puted worth L. 3000 per annum, was detected in the very act of using loaded dice, and

He then presented them to the company, who instantly saw and acknowledged the deceit: The Major was attempting some apology; the company would hear nothing, but turned him out of the room with every mark of disgrace and reprobation.

The dice were afterwards presented to the Jockey Club, in order to come to some resolution upon this transaction; but the President said, as their meeting referred more immediately to the Turf, they could do nothing in it, but determined, for themselves, not to let such a man, in future, mix with them in any company. This resolution has been since followed in all the reputable gaming clubs.

Such is the story; the reflection that arises from it is very obvious, which is, that though this degraded man was so *unfortunate for himself* as to be detected, where is the public gaming table that is not surrounded with such? and where is the man, without a fortune of his own, that can spend from one thousand to two thousand pounds a-year, (as most of them do), without having some *superiority*, some *dexterity*,

and obliged to fly the country for it ;
which was exactly Mr Brodie's situation.

The very head and front of his offending
Hath this extent, no more.

The Dean of Faculty then said, that he
would endeavour to point out the import
of the evidence to the Jury in the follow-
ing order :

In the *first* place, The direct evidence of
Brown and Ainslie.

In

terity, over the generality of those who play with
them ?

If the independent men, who play at public tables
and at public watering-places, therefore, were to *look*
sharp, independently of the consideration of rank,
title, or fortune, they would constantly find out *more*
Majors of this kind ; but, if they *would do better*, they
would avoid all those places which are subject to
the contamination of such men.

In the *second* place, The collateral and circumffiate evidence.

And, *lastly*, The exculpatory proof of an *alibi*.

With regard to the evidence of Brown and Ainslie, it was very true, that the Court had determined the *admissibility* of it, but had left its *credibility* to the Jury. One of these witnesses, Ainslie, as the Jury had already heard, had been accused of the very crime charged in the Indictment, and steps had been taken to bring him to justice for it. It was natural, therefore, to believe, that a person in this situation would not scruple to say any thing that tended to secure himself from punishment ; and, in this case, the event justified the observation ; for although Ainslie, in the different declarations emitted by him before the Sheriff, had not said any thing that tended to criminate Mr Brodie, yet, no sooner was Mr Brodie apprehended, than this witness was
given

given to understand, that he might substitute Mr Brodie in his place, and save his neck, by turning evidence. It was said, that even undue means had been practised upon the witness, to induce him to criminate Mr Brodie; and a proof, to that effect, had been offered, but disallowed, as it had not been offered to be brought home to the Lord Advocate. But, whether that was true or not, it was an undeniable fact, that Ainslie had only one alternative, either to become evidence against Mr Brodie, or to be tried, and perhaps hanged, for this crime himself. It was a situation too powerful to be overcome even by much more virtue than the witness could boast of: His evidence, therefore, in such a situation, was not only suspicious, but altogether incredible.

The evidence of the other witness, *Brown* was, if possible, more exceptionable than Ainslie's: A more notorious and hardened villain than Brown had not, perhaps, been

ever produced upon such an occasion; and the appearance he had made that day in Court would be remembered by the Gentlemen of the Jury. It had been proved, and admitted by the prosecutor, that he was not only accused, but *convicted*, of a former felony, of which he had been pardoned, for the avowed purpose of qualifying him to bear evidence upon the present trial. The witness had foreseen this consequence*; and it became a matter of infinite importance with him to accomplish it: He had first made this attempt, by informing only against Smith and Ainslie; and his first declaration went no farther than accusing them; he did not so much as mention Brodie's name. Finding, however, that this had not answered his purpose, he thought it necessary to fix upon a person whose character and situation would excite public attention, and whose punishment would become an object: The person so fixed upon happened to be the unfortunate prisoner, Mr Brodie,

* See note, p. 81.

Brodie. His acquaintance with the witnesses, and his recent retreat from the country, suggested him to Brown as a proper person to fix an accusation upon; and he was not mistaken; for it had completely answered his purpose, and secured his pardon for past offences.

The nature and effects of that pardon the Jury had already heard debated at considerable length; and it was unnecessary to detain them with a repetition of it. It had been found that it restored the person pardoned to the *capacity* of being admitted an evidence; but that was a matter of no consequence, if his *credibility* stood affected: And that this was the case, the Lord Advocate himself had candidly admitted.

Such being the characters, and such the situation, of the *direct* evidence brought forward to criminate the prisoners, it was surely entitled to no degree of credit whatever, as both these witnesses had a manifest purpose to serve by the conviction of the prisoner,

prisoner, Mr Brodie ; a purpose, too, which the extremity of virtue could hardly be supposed to withstand, much less could it be expected from hardened villainy and avowed guilt ; and he would be sorry if even the reputation, far less the life, of a respectable citizen, could be affected by such evidence.

If there was, therefore, no credit due to the *direct* evidence of Brown and Ainslie, the *collateral* proof would be found to be exceedingly defective indeed. The chief witness here founded upon was *Graham Campbell*, servant to the prisoner Smith ; but her evidence, when examined, amounted to nothing ; for she was not only perfectly inconclusive with regard to *time*, but stood contradicted with regard to a very material fact. She had said, that, some *few nights* before she was apprehended, she saw Mr Brodie in her master's house along with Brown and Ainslie : That, after some time, they went out, and returned
again

again in an hour or two : That Mr Brodie returned along with them ; and that they supped all together in the kitchen after their return.

This witness had not condescended upon either the night, or the hour of the night, when this meeting happened ; there was therefore nothing to fix it to have been on the evening that the Excise Office was robbed. On the contrary, she had condescended on a circumstance which excluded the possibility of its being on that evening ; for she had said, that they all returned together, and supped in her master's kitchen ; —yet Brown and Ainslie both concurred in saying, that they did not see Mr Brodie again that evening after the robbery was committed, and that he did not return to Smith's with them.

Such a material contradiction in the evidence for the Prosecutor could not escape the observation of the Jury ; and it was a strong

strong additional circumstance, tending to discredit the evidence of Brown and Ainslie.

Much stress had been laid upon Mr Brodie's intimacy with the supposed guilty persons, his absconding from this country, and his letters and declaration libelled on.—All these, however, could be accounted for in a manner perfectly consistent with his innocence of the crime charged against him.—The Jury would recollect, that Mr Brodie's propensity to gambling was already fully admitted; and it had come out upon proof, that a prosecution actually depended against him, before the Magistrates of Edinburgh, for using false or loaded dice*. The unfortunate prisoner, therefore, perhaps conscious that these shameful practices could

* As Mr Brodie's elopement from this country was ascribed to this prosecution, we have been at pains to get the particulars of it, for which see Appendix, No. 2.

could be established against him, had timely withdrawn himself from this country, to avoid the shame that would necessarily have followed on a conviction for such an offence. His known intimacy with Smith and Ainslie, who were taken up as guilty of the robbery libelled; was an additional reason for taking such a step, although he had no concern in it. It was what any gentleman possessed of honourable feelings, and who had a character to lose, would have done: And, surely, it could not be said that Mr Brodie had no character to lose, and might, therefore, reasonably be supposed to be possessed of honourable feelings. His own letters expressed much regret for his past conduct, and for his having associated with such company: And the allusion he made to their depredations could only apply to their *gambling*, and particularly to the depredation on Hamilton the chimney-sweeper, which he called *the last fatal one*;—and well might he call it so; for fatal it had been

been to him indeed.—But, as to the other more atrocious depredations of Brown, Smith, and Ainslie, there was not a shadow of evidence that tended to establish Mr Brodie's knowledge of, much less his accession to, them, excepting the evidence of these guilty men themselves.—Indeed, there was one circumstance which tended strongly to confirm this construction of the word *depredations*, used in his letters; as well as to discredit the evidence of Brown and Ainslie; for he expressly says, '*that he lost L. 10 in cash by it,*' although Brown and Ainslie both say that Brodie received a fourth share of the money taken from the Excise Office, amounting to L. 4 odd shillings, which not only excluded the possibility of the expression in the letter being an allusion to that depredation, but with almost equal certainty fixed it to allude to their gambling depredations, as these were the only depredations by which a man could lose cash; and it was believed to be no unfrequent thing among gamblers to allow

allow themselves to lose cash, when they were fleecing a third party, to prevent suspicion:

The matter, however, did not rest here; for there was not only no credible proof of Mr Brodie's being guilty of the crime libelled, but there was a direct and conclusive proof of an *alibi*, upon his part, at the time the crime was committed.—A very unsuccessful attempt had been made by the Lord Advocate to throw discredit upon this part of the evidence, by showing a discrepancy between the witnesses; but that was a matter of no consequence whatever to the prisoner: Mr Sheriff was of a character, and situation in life, above being suspected of swearing to an untruth, even to save the life of his unfortunate friend, and was certainly much better entitled to credit than the united testimony of Brown and Ainslie. They had said, that Brodie was in Smith's house on the *afternoon* of

the Wednesday, when they concerted to meet at seven o'clock, and go to the Excise; yet Sheriff deposed to having been constantly in his company from 3 o'clock till within a few minutes of 8 o'clock; so that there was here an evident contradiction, and the Jury would judge which was entitled to most credit.—There was also Jean Watt, and her servant, both unexceptionable evidences, who had positively concurred in proving, that, on the night of the robbery libelled, Mr Brodie came to Watt's house *just as the eight o'clock bell was ringing, and that he was not out again till about nine o'clock the next morning*; and, as it had been established that the Excise Office was not begun to be robbed till (at the earliest) about half an hour after eight o'clock, there was here as clear a proof of an *alibi*, upon the part of Mr Brodie, as it was possible to conceive; nor could the discrepancy of these witnesses, in other particulars, affect their credibility in any shape: They were concurring and consistent as to
the

the main fact ; and were, on that account, entitled to belief ; otherwise the disbelieving them inferred that they had been guilty of a direct and deliberate perjury ; a crime which the gentlemen of the Jury would be cautious of fixing a suspicion of, upon characters innocent and unimpeached.

It had been said by the Lord Advocate, that an attempt to prove an *alibi* was generally a desperate resource ; and the evidence of it was liable to suspicion, more especially when the *alibi* was very near the place where the crime was committed ; but the Dean of Faculty, although he admitted the general proposition, said it was by no means conclusive ; nor could it discredit or take away the effect of a direct, positive, and unexceptionable proof. For instance, supposing he himself had been accused of committing a felony at any time of that day, even on the outside of the very Court where he stood, he was certainly in condition to bring the most unexceptionable
proof

proof of an *alibi*, and that he had been attending his duty in Court the whole of that day, without being once absent ; and such a proof no Jury could disregard, however strong other suspicions might be against him.

Here the Dean of Faculty concluded a most able and ingenious defence for Mr Brodie, by expressing his hope, that the gentlemen of the Jury would find, upon a fair review of the evidence, nothing to warrant their returning a verdict that would affect the life of his unfortunate client,

About half past four in the morning, the *Lord Justice Clerk*, who had never once left the Court, began to sum up the evidence on both sides. He had bestowed the most unremitting and animated attention during the whole course of this long and fatiguing trial,

trial. The most minute circumstance, either for or against the prisoners had not escaped him; and he went through the whole train of evidence with a shrewdness, discernment, and a manly vigour of understanding, that few men could have exerted after so much labour. He stated, with fairness and candour, every part of the evidence on both sides, and gave the most solid arguments for the decision of his own mind.

It would extend this account to an unnecessary length, to follow his Lordship thorough the whole of what he said, as he stated to the Jury the import of the evidence in much the same point of view that it had been done by the Lord Advocate, balancing it with what had been so ably and ingeniously stated by the Dean of Faculty.

His Lordship said, that it was unnecessary to apply the evidence, tending to show that a robbery was actually committed in
the

the Excise Office at the time, and in the manner libelled, as that was a fact which had not been disputed : It therefore only remained to inquire who committed that robbery, and whether the prisoners at the bar, or either of them, were actors or art and part in it.

With regard to the prisoner Smith, he had admitted, that he was a principal actor in the robbery by his own declarations, which had been read, and emitted at different times, when the prisoner was cool and recollected, as had been proved. It was true, these declarations would not, *per se*, be sufficient to warrant a verdict against Smith ; but they were confirmed in every particular by the direct evidence of Brown and Ainslie, and also by the whole of the circumstantiate evidence : It was therefore impossible not to believe them ; and, if the Jury thought so, they would find a verdict for the Crown accordingly.

With

With regard to William Brodie, his Lordship said, that the Jury had, in the first place, the *direct* evidence of Brown and Ainslie. It was true, a very strong, although not a relevant objection in law, had been stated to these witnesses, particularly to Brown ; and, if they had contradicted one another, or had been contradicted by the other evidence, no doubt their evidence would have gone for nothing. They were only to be believed in so far as they were consistent, and supported by the other parts of the proof ; but to that extent they were entitled to credit. It was also a strong circumstance, tending to support their credibility, that they were corroborated, in every material circumstance, by Smith's declarations. These, indeed, were not evidence against Mr Brodie ; but they were a link of the general chain of evidence which tended to strengthen and give effect to the whole ; for surely it could not be said that he (Smith) was in a situation to give false testimony against another, which, at the
same

same time, endangered his own life ; nor had he any opportunity of framing a story with Brown and Ainslie.

There was, added to this direct evidence, Mr Brodie's intimacy with the persons who committed the robbery, his being in company with them that very evening, at the time they went about it, which was sworn to by Graham Campbell. There was, his absconding from this country immediately when Smith and Ainslie were apprehended,—his concealment in London, although he knew that he was searched after,—his making his escape from there with so much art and disguise,—his going to Holland, and changing his name. There were his letters to different persons in Edinburgh ; in one of which, he acknowledged a direct concern in the last depredation of Smith, Brown, and Ainslie, which he calls the last *fatal* one. These were all circumstances that afforded a strong suspicion against Mr Brodie. It was true, the Dean of Faculty
had

had endeavoured to account for these suspicious appearances in a different way, by ascribing them to the process at the chimney-sweeper's instance against Brodie, and the Jury would judge which of these accounts were most credible ; but his Lordship said, it appeared to him, that the account now given of the cause of Mr Brodie's conduct was rendered perfectly incredible by his own letters and declaration, as well as by the other circumstances of the case ; for, could it be believed that a process at a chimney-sweeper's instance would have occasioned all this ?

There was also, upon the part of Mr Brodie, an attempt to prove an *alibi*. But the import of that evidence had been so fully stated already, he would not dwell upon it. He left the credibility of the witnesses, and the discrepancy of their testimonies, to the Jury. In short, he concluded, with desiring the Jury to return such a

E c verdict

verdict as their own good sense and consciences should dictate.

The *Lord Justice Clerk* having finished his address to the Jury, he said, that he hoped it would not be inconvenient for them to return their verdict at twelve o'clock that day ; but, upon the suggestion of one of the Jurymen, it was fixed to be at one o'clock. The Court then pronounced an interlocutor, appointing the Jury instantly to inclose in that place, and to return their verdict at one o'clock ; and appointed the prisoners to be carried back to prison ; continued the diet of Court against them till that time ; and required all persons having interest then to attend under the pains of law.

The Court being thus adjourned, the Jury were inclosed, and remained together about half an hour, when the doors were opened.

Thurs-

Thursday August 28.

The Court being again met at one o'clock, and the prisoners brought to the bar, the Clerk of Court called over the list of the Jury; and being all present, the Lord Justice Clerk asked them who was their Chancellor; upon which the Chancellor rose, and delivered their verdict to his Lordship sealed.

The verdict being opened and read by the Judges severally, they appointed it to be recorded. During this pause a deep silence prevailed.

The verdict being recorded, the Lord Justice Clerk called upon the Prisoners to attend to it; and it was then read aloud by the Clerk of Court as follows :

At

* *At Edinburgh, the 28th day of
August 1788 years,*

* The above assize having inclosed, made
 ‘ choice of the said John Hutton to be their
 ‘ chancellor, and of the said John Hay to
 ‘ be their clerk, and having considered the
 ‘ Criminal Indictment raised and pursued
 ‘ at the instance of his Majesty’s Advocate,
 ‘ for his Majesty’s interest, against William
 ‘ Brodie and George Smith, pannels *, with
 ‘ the interlocutor on the relevancy thereof
 ‘ pronounced by the Lord Justice Clerk
 ‘ and the Lords Commissioners of Justicia-
 ‘ ry, together with the depositions of the
 ‘ witnesses adduced by the Prosecutor for
 ‘ proving the same, and the several decla-
 ‘ rations libelled on, as also the depositions
 ‘ of the witnesses adduced for the prisoner
 ‘ William Brodie, in exculpation,—They
 ‘ all,

* The using the word PANNEL in place of PRISONER is peculiar to Scotland. It is believed it took its rise from the *nich* or place where the criminal was placed at the bar, which was called the *Pannel*.

all, in one voice, find the said William Brodie and George Smith, Pannels, GUILTY of the crime libelled. In witness whereof, their said Chancellor and Clerk have subscribed these presents in their name, and by their appointment, place and date foresaid.

(Signed) ' *John Hutton*, Chan^r.
' *John Hay*, Clerk.'

The above verdict being read, the Lord Advocate rose, and craved the judgment of the Court upon it.

The Counsel for the pannels then pled an arrest of judgment, upon the following grounds. *imo*, That, from evidence taken in the course of the trial, it appeared that the libel was insufficient, in so far as it charged, ' That the pannels did wickedly and feloniously break into *the* house in which the General Excise Office for Scotland was kept ;' whereas, it ought to have

have stated, That they so broke into *one* of the houses so kept, describing such house particularly, in respect that it appeared from the proof that there were two separate and distinct houses in which the General Excise Office for Scotland was then kept, on the opposite sides of the court, and at a considerable distance from each other. *2do*, Supposing this uncertainty in the libel as to the *locus delictæ* was insufficient to operate an arrest of judgment, no judgment could pass upon the verdict of the Jury, on account of the uncertainty thereof, inasmuch as it found, in general terms, the pannels guilty of the crimes libelled, which inferred that they had been guilty of breaking into *the* house in which the General Excise Office for Scotland was then kept, without distinguishing to which of the *two* before mentioned houses the verdict applied. And the present plea in arrest of judgment, on that account, deserved the greater consideration, that the Jury were called upon, by the manner in which
the

the proof was conducted on the part of the pannels, to attend particularly to the circumstance of the Excise Office being kept in *two* separate and distinct houses, as above stated.

Answered, in the *first* place, That the plea now offered was not receivable in point of form, as it resolved into an objection to the relevancy or form of the indictment, which ought to have been stated *in limine*. The fact, however, was, that the indictment was sustained as relevant, and admitted to the knowledge of an assize in common form; and the Jury having returned a verdict finding the pannels guilty of the crime there charged, there could be no room for any further proceedings, except to pronounce the sentence of the law upon the verdict so returned; the facts which were the subject of proof were not then before the Court; and, regularly, the Court had no access to know, or to inquire, whether the Excise

con-

consisted of *one or more* houses. *2dly*, Even if the matter were open, the objection was frivolous, the fact being, that the house which was broke into, as stated in the indictment, was really and truly the house known by the name of the General Excise Office for Scotland at the time, although one or two of the clerks, or inferior officers, were accommodated in a small house within a few feet or yards of the large one, and which was joined to it as a wing; the principal house which was broken into being hired at L. 300 per annum of rent, and the small house at L. 8 per annum.

The Court, after reasoning, pronounced the following interlocutor: ' The Lord Justice Clerk, and Lords Commissioners of Justiciary, having considered the foregoing debate, they repel the plea offered in arrest of judgment.'

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The *Lord Justice Clerk* then addressed himself to the prisoners in a serious and pathetic manner. He said it was now the duty of his office to pronounce the sentence of the law against them : They had had a fair trial, conducted throughout with attention and candour, and had been found guilty by the verdict of their country. He wished he could be of any use to them in their present melancholy situation ; but to one of them any thing he could say would perhaps be deemed useless. Mr Brodie, from his situation in life, and his education, could not fail to know what belonged to his present situation. He hoped they would improve the short time they had now to live, by a sincere repentance of their crimes, and in obtaining forgiveness of Heaven for their past offences ;—and God always listened to those who sought him in sincerity.

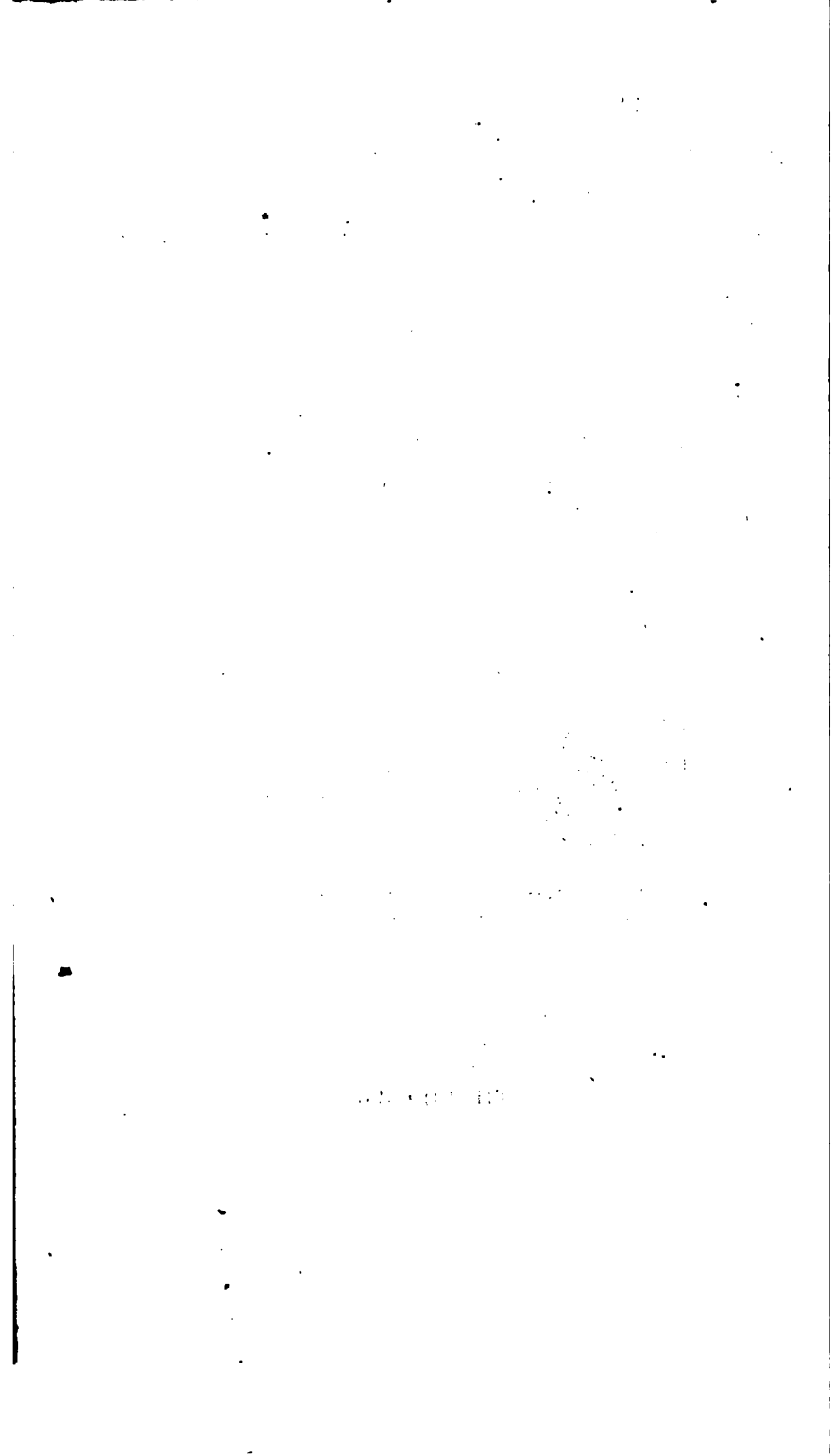
His Lordship then pronounced the awful sentence, ‘decerning and adjudging
‘the pannels to be carried from the bar
‘back to the tolbooth of Edinburgh,
‘therein to remain till Wednesday the
‘first day of October next; and, on that
F f ‘day,

‘ day, betwixt the hours of two and four
 ‘ o’clock afternoon, to be taken from
 ‘ the said tolbooth, to the place of com-
 ‘ mon execution appointed by the magi-
 ‘ strates of Edinburgh, and there to be
 ‘ hanged by the neck, by the hands of the
 ‘ common executioner, upon a gibbet, un-
 ‘ til they be dead; and ordained all their
 ‘ moveable goods and gear to be escheat
 ‘ and inbrought, for his Majesty’s use,
 ‘ which was pronounced for doom !’

The prisoners were then removed from the Court to prison. During the whole course of this interesting trial, an immense croud of spectators attended, which, at different times, incommoded and interrupted the proceedings of the Court. At pronouncing the sentence, Mr. Brodie discovered some inclination to address himself to the Court, but was restrained by his Counsel. He stood up in a firm manner, with his hands in his sides, while the sentence was reading, and, when it was ended, made a bow to the Judges.—Smith seemed sunk in deep distress, and tears were dropping from his eyes.



SMITH at the Bar



A P P E N D I X.

No. I.

Mr Groves was despatched from London to Amsterdam, to take charge of Mr Brodie. We have been favoured with a copy of his Journal, which, as it is curious, and Brodie the first prisoner we remember of having been brought from the Stadthouse to Britain, we lay it before the public. •

Mr Groves's Journal.

On Tuesday, the 1st July, I left London, and arrived at Harwich at three o'clock the next morning: Wednesday, waited on Mr
Coxe,

Coxe, the agent for the packet, with Mr Frazer's letter, and also on the Captain, who dined with me: At half-past four in the afternoon sailed out of the harbour, and lost sight of the land at nine.—Thursday, got sight of Helvoetsluys at 12 next day,—a dead calm four leagues from shore,—rowed into the harbour in the long boat, with Captain Hearne, and Carpmeal, (Sir S. Wright's officer), with the mail, and a woman going as Lady's maid to Sir James Harris's Lady,—drove back by tide, and almost out to sea again,—landed on sand, walked to several farm-houses, leaving the mail and baggage on the sand, guarded, in quest of a waggon,—refused;—a boor, at last, went at an extravagant price;—we had walked seven miles on hot sands, and parched with thirst;—at eight o'clock waggon came with the mail, &c.—set out for the Brill; but, within two miles, waggon broke down, and obliged to procure boors to carry mail, &c.—arrived at the Brill at half-past nine;—Brooks the messenger came

came from Helvoetfluys to meet us, where he had been waiting,—had heard nothing of any person (Englishmen) being in custody at Amsterdam, which much alarmed me,—nor had Hutchinson, the collector of the passports,—more alarmed;—delivered Mr Frazer's letter to Brooks;—at ten set off with Brooks for Maaslinfluys,—arrived there at half-past eleven,—got to Delft at three-quarters past 12;—arrived at the Hague at 3 in the morning in an open post waggon, with heavy rain, thunder, and lightning.—Friday, waited on Sir James Harris at ten in the morning,—introduced by Brooks,—treated with great affability, and received a letter from Sir James, which he had already wrote, directed to Mr Rich, the consul, Sir James having first informed me that Brodie was safe in the Stadthouse,—consulted Sir James on the mode of obtaining him,—informed that, if the magistrates of Amsterdam required an official application to the States General, to come back immediately to him, and he would obviate all difficulties;

ties; but he did not think it would be necessary; it was Sir James's opinion the magistrates would give him up without, if not, was certain they *would detain him* till an answer to Sir James's application to the States could be obtained;—set off for Amsterdam, and arrived there the same evening;—waited on Mr Rich,—politely received; and we consulted on measures,—Mr Rich to wait on one of the magistrates that evening, and to send to me early next morning.—Waited on Mr Duncan, a Scots gentleman, and father-in-law to Mr Gerard, a minister at Amsterdam, with Mr Langlands's letter;—Mr Duncan seemed willing to identify Brodie; but, on being called out into another room by Mr Gerard and his wife, on his return, Mr D. said, as far as his word of honour as a gentleman would go, and his belief, he would *say* he was the man; but, if an *oath* was required, he would not:—Saw then a manifest reluctance in Mr D. and had no doubt his daughter and the parson would endeavour

endeavour to persuade him to decline troubling himself in the matter ; but judged he could not go back from what he had said to Mr Rich.

N. B. No mischief but a woman or a priest in it,—here both.

Saturday morning, received a message from Mr Rich,—most of the magistrates gone to their country-houses,—nothing could be done till Monday ;—Mr Rich entertained no doubt, but said a magistrate had informed him, that a formal requisition must be made by him in writing to the magistrates,—he produced the copy of one, requiring the person of *William Brodie* to be delivered up ; I corrected it, by inserting otherwise *John Dixon*, as the magistrates of Amsterdam knew of no *William Brodie* ; Mr Rich agreed it was proper ;—informed him of my suspicions respecting Mr Duncan, and the steps that would be taken by his family, to make him, if possible, recant ;—
my

my fears further increased, as Mr Duncan lodged in the same tavern with me, I had frequent opportunities of conversation with him, and could plainly see a sorrow for what he had said, and a wish to retract.

—Monday, waited on Mr Rich,—found, by a mistake in not inserting *otherwise John Dixon* in the requisition, that the business must be delayed till the next day ten o'clock, when a general meeting of the magistrates, with the grand schout, (high sheriff), to consider on the application ;—mistake corrected, and requisition presented.

—Tuesday, sent for by the magistrates to the Stadthouse ;—from their manner, judged Brodie's delivery as *pre-determined* ;
—Mr Duncan sent for.

Mr Duncan's account to the Magistrates.

That he was not a native of Edinburgh, but of Aberdeen ; that he frequently came to Edinburgh on business ; and that, eight,
ten,

ten, or twelve years ago, he could not say which, the man who now called himself *John Dixon* was pointed out to him as Deacon Brodie, having asked a gentleman who he was: That he had seen him several times after, and always understood him to be Deacon Brodie, but did not know his Christian name; had no doubt, and verily believed he was the same man; but would not swear he had no doubt, and verily believed him to be the same.

BRODIE ordered to be brought in.

Substance of Examination.

Q. What is your name?

A. John Dixon.

Q. That is the name you go by here—but is not your real name William Brodie?

G g

A. My

A. My Lords, I stand here, and claim the protection of the laws of this country, which require two witnesses, on oath, to prove me William Brodie.

You shall have the protection of the laws of this country, but they do not require two oaths to identify you; it requires that the magistrates shall be *satisfied* you are the same man.

Mr Groves. I beg leave he may be asked, If he is not a native of Edinburgh?

Question put—The answer, I have been at Edinburgh.

Mr Groves. Is he a Deacon of Edinburgh?

A. I claim the protection of the laws.

Mr Groves. Does he know Mr William Walker,

Walker, attorney at law, of the Adelphi, London ?

A. I know such a man.

Mr Groves. Then that William Walker procured the escape of this William Brodie from London, which I can prove by extracts of letters now in my pocket, the originals of which are here in the hands of your officers. I can swear to Mr Walker's writing.

Prisoner ordered to withdraw.

Here the Magistrates asked me, if I was ready to swear, that, from the pointed description of him, and all said circumstances, he was, to the best of my belief, the man required to be given up?—I told them I was.

Mr Duncan was then asked, If, from what he knew, and what he had heard, he
would

would swear he had no doubt, and believed him to be the man.

Mr Duncan's reply. I am only a visitor here, and being called on such an occasion, it might, in my own country where I am a Magistrate, have the appearance of forwardness, if I was to swear. I am a man of honour, and a gentleman, and my word ought to be taken. I do believe, and I have no doubt, that he is the same man ; but I decline to swear it : I'll take no oath.

The Magistrates expostulated, but unsuccessfully, on the absurd idea of saying, *I have no manner of doubt, and verily believe*, and refusing to swear ; *I have no manner of doubt ! &c.*

As I had previously drawn up an information for Mr Duncan and myself to that effect, he was asked, If he would sign it without swearing ? when Mr Duncan said he would.

The

The Magistrates then said, that they should pay the same compliment to me they did to Mr Duncan, and take my signature to the certificate, without an oath, even to my belief. Certificates signed.

The prisoner was then ordered in, and the certificates read to him, and asked, If he had not a father ? he replied, None ; But you had a father, said the Judge—was not his name Brodie ? To this Mr Brodie replied, “ There are more Brodies than “ one.”

Then by that, said the Judge, you confess your name is Brodie ?

A. Lapsae linguae, my Lord.

Brodie again insisted upon the oaths, but the Judge told him that all they wanted was to be *satisfied*, which they were from what Mr Duncan and Mr Groves had signed,
ed,

ed, and partly from a confession of his own.

He was told he should set off as that day; and it was settled at four in the afternoon.

The Judge told me I should have a *guide*, who would procure the means of conveyance, &c. I took my leave of them with thanks, &c.; waited on Mr Rich; at four was sent for to the Stadthouse, where there was a prodigious croud; two carriages and *four* guides, with four horses in each carriage; and the prisoner, being properly secured, we put him into one, and got to Helvoet without much interruption next day at one o'clock; packet failed at five.

N. B. I had wrote a letter to Sir James Harris on the Saturday, requesting the packet to be detained, who informed me by Mr Rich, with whom I dined on the
Monday,

Monday, that it should be detained to the last moment.

Brodie was watched two hours alternately on board by the ship's crew; his hands and arms confined, and his meat cut for him, &c. On Thursday night, eleven o'clock, we arrived at Harwich—supped—set off immediately, and arrived next day at noon at Sir Sampson Wright's, before whom, and Mr Langlands, Brodie confessed he was the person advertised.

No. II.

The following is an account of the process, at Hamilton the chimney-sweeper's instance, mentioned in the trial respecting the loaded dice, where the Club, so often mentioned in Smith's declarations, makes a conspicuous figure.

The

The process is in the form of a petition and complaint, against Brodie, Smith, and Ainslie. It states, that, on a certain night in January last, he, Hamilton, accidentally met with these persons in the house of Clark vintner, at the head of the Flesh-market close : That when he joined them there playing at dice, that, suspecting no fraud or deceit, he had joined in the amusement, and, in a short space, lost six guineas, and some odd shillings : That, being surprised how this could happen, he seized on the dice, and had them examined and discovered : *That they were loaded, or false dice filled at one end or corner with lead* : And he concludes with praying for a warrant to apprehend and incarcerate the said persons, until they should repeat the sum of which he had been so defrauded, and pay a sum over and above, in name of damages and expences.

Answers were given in for Mr Brodie to
this

this complaint, and separate answers for Smith and Ainslie.

They stated, in general, that, on the evening mentioned in the petition, they were innocently amusing themselves with a game at dice over a glass of punch, and that the petitioner intruded himself upon their company: That, if false dice were used on that occasion, it was unknown to the defenders, as the dice they played with belonged to the house: That, if the petitioner had lost the sum he alledged, it had not been gained by the defenders, as Smith and Ainslie had said, that, so far from gaining any thing that evening, they had lost, and Brodie said he had only gained 7 s. 6 d.: That the petitioner himself was a noted adept in the science of gambling; and it was not very credible that he would have allowed himself to be imposed upon in the manner he had alledged.

The *replies* for Hamilton to these an-

H h

swers

swers are a curious production. After stating the nature of the complaint, and the defences that had been made to it for Brodie, Smith, and Ainslie, they say, "A wonderful story indeed! Smith and Ainslie, two noted sharpers at the business, in their answers, assert they were losers, and innocent Mr Brodie avers he was only a gainer in this paltry trifle of 7 s. 6 d. and yet the petitioner finds himself out of pocket near as many guineas as that gentleman says he received of shillings. Certain, however, it is, that it could not sink! Certain also it is, that in their company, by undue means, he lost five guinea notes, two half guineas in gold, and six shillings in silver, before he suspected the fraud."

"Neither Dr Katterfelto, nor Breslaw, were present to transmute it. Unless, therefore, some of their learned pupils had not been very near him, he would have been in possession of his money at this moment. Mr Brodie knows nothing about, and is
entirely

entirely ignorant of such devices, and always considered all dice to be alike. It is, says he in his answers, it is the petitioner who 'is such an adept in the science, as to be alone capable of using such instruments, and of explaining the nature of them.'—Miserable ! that the petitioner, a deemed sharper, should be taken in by a pigeon, to use the *lingua* of the Club. But so it has happened. Mr Brodie knows nothing of such vile tricks—not he ! He never made them his study—not he ! Never was at either pains or expences to acquire them, nor ever studied under Mr Breslaw, &c. &c. for that very special purpose—not he indeed ! Mr Brodie never haunted night-houses, where nothing but the blackest and vilest arts were practised to catch a pigeon ; nor ever was accessory either by himself or others in his combination, to behold the poor young creature plucked alive, and not one feather left upon its wings—not he indeed ! He never was accessory to see or be concerned in
fleeing

fleeing the ignorant, the thoughtless, the young, and the unwary, nor even made it his study, his *anxious study*, with unwearied concern, at midnight hours, to haunt the rooms, where he thought of meeting with the company, from which there was a possibility of fetching from a scurvy fixpence to a hundred guineas—not he indeed ! He is unacquainted altogether, either with packing or shuffling a set of cards—he is indeed ! Mr Brodie, in all his innocent amusements, never met with any person, who, after having been fleeced of money, to the amount of a hundred pounds, and detected of the vile and dishonest methods by which it had been abstracted from him, received, as a return for his moral rectitude, a very handsome incision on the eye—never he indeed ! He never was in such company, nor ever met with such accident—not he ! It is only the petitioner, or such like him, who are known and adepts in the devices, which Mr Brodie very modestly says *he is innocent of*, who
could

could be guilty of such practices, and receive such returns.

“ But, however certain Mr Brodie’s innocence may be *on these scores*, previous to the 17th January current, it is as certain, that on that night, both him, and Ainslie, and Smith, had acquired *more compleat knowledge* of the business of gambling than the petitioner ; for, notwithstanding all his art, they went infinitely beyond him ; he was totally at a loss when he observed the dice take such a run ; not indeed but he was apprehensive something was going on unfair and ungenerous : At last, after having been despoiled of his money, he seized them, and discovered the charm. For this unjustifiable procedure in the defender, the petitioner is confident every good magistrate will feel it their duty to give him reparation ; and it is their business to check these infamous proceedings, be they followed by whatsoever person they may ; for, the *greater* the man is, and the
weightier

weightier his purse, the more is *he* the *object* of justice and example ; and the *lower* the man is, in rank or station, *who* suffers by such, the *louder* is the cry, and *more* the demand for redress."

" If, so long ago as the 1711, the Legislature had perceived its pernicious consequences, how much more is it the duty of those to whom its execution is entrusted, to act up to its very letter ; when it is a fact, that, in these modern times, gaming of every kind has pervaded all ranks ; from the stable-boy to the Peer it is the subject of study and of practice ; and some of every denomination have made it their chief business to attain the method or art how to cheat his neighbour the best, his neighbour, nay, his friend and companion, who never would have suspected such a latent serpent lay in his breast. There are living instances of men, who, though born to independence, and enjoying most ample fortune, can intermix with the very lowest class of
the

the multitude, and even court their company, from motives prompted surely by the principles only of rapacity and avarice; and, without shame or remorse, use the most unjustifiable and dishonest practices to fleece them of their little pittance, pittances so much below their envy, that a relation of them would not bear the appearance of truth; and what must these men appear to be in the mind of every good person; yet still there are such who demean themselves to these practices, and, rather than associate with their equals, will descend to keep company with ostlers, pedlars, and stable-boys."

No.

No. III.

Narrative of the Facts respecting the breaking into the Shop at the head of Bridge-Street, belonging to John and Andrew Bruce, Merchants in Edinburgh, on the night betwixt the 24th and 25th December 1786.

In the course of the precognitions taken by the Sheriff respecting the crimes committed by Brodie, Smith, Brown, and Ainslie, Mess. John and Andrew Bruce, merchants in Edinburgh, applied to the Procurator Fiscal to know if any facts had come out respecting the breaking of their shop at the head of Bridge-street; and always received for answer, that, whenever any thing occurred
about.

about breaking their shop, they would be informed of it. The Procurator Fiscal, however, never gave the Mess. Bruces any information on that head, altho' the very warrant on which Smith and Ainslie were incarcerated in March last bore that it was on suspicion of breaking their shop.

When Smith and Brodie received their indictment in the 19th of July last, it then appeared that no crime was specified in the indictment but the breaking into the Excise Office. Mess. Bruces then applied to the Procurator Fiscal, to know if any thing had come out, or was taken down in the precognition respecting the breaking of their shop; when he told them, that nothing had been taken down thereanent; though Mess. Bruces were informed by Smith, that he had, when examined before the Sheriff, declared every fact concerning it. Mess. Bruces were at a loss to account for this extraordinary neglect of not taking down into the precognition all the facts that Smith had

I i declared

declared relative to their shop. They were in justice entitled to this, so as at least to have been satisfied in knowing who had done them the injury ; and it might have led to a complete proof of the fact, so as to entitle them to restitution of the value stolen from them, from the funds of those who had been guilty of the crime. They signified to the Procurator Fiscal that they wished still to have an examination of all concern'd. But this he declined, by saying it was impossible to do it now—that they were indicted.

Mess. Bruce therefore drew up a memorial, and laid it before his Majesty's Advocate, in order to get, if possible, an examination respecting the breaking of their shop ; when his Lordship was pleased to signify, that it could still be done, and desired an application might be made to the Sheriff for that purpose ; which was done accordingly by a petition of the following tenor :

Unto

*Unto the Right Hon. the Sheriff-depute
of the County of Edinburgh, or his
Substitute,*

**The PETITION of JOHN and ANDREW
BRUCE, Merchants in Edinburgh.**

Humbly sheweth,

That, on the night betwixt the 24th and 25th days of December 1786, the petitioners shop, at the head of Bridge-street, was broke into, and several gold watches, seals, rings, and other articles, were carried off, to the value of about L. 350 Sterling. The petitioners applied to the Procurator Fiscal upon this occasion, who assured them, that every step should be taken to endeavour to find out the persons who had robbed them of their property.

No intelligence, however, could be got respecting this business till the beginning of
March

March last, when Brown gave information of him and his associates, Smith, Ainslie, and Brodie, being the persons who had committed so many offences of that kind; and, accordingly, the Procurator Fiscal presented a petition to your Lordship, stating the fact, *of the petitioners shop being broke*, and referring to a list of articles stolen therefrom; and that there was reason to believe that Smith and Ainslie were the persons guilty of that crime, upon which they were apprehended, and incarcerated in the tolbooth of Edinburgh, where they have remained ever since; and Smith and Brodie are now indicted to be tried for certain crimes, other than that of breaking the petitioners shop.

When the petitioners learned that no notice of their shop was taken in the indictment, they applied to the Procurator Fiscal to know what facts had come out in the precognition, regarding the breaking of their shop, when he informed them, that
not

not a word respecting their shop had been taken down in the precognition, though he admitted, when Smith was examined before your Lordship, he had acknowledged the fact that he was the person who had broke the petitioners shop, with the knowledge, and by the advice of Brodie: That Brodie had actually got part of the articles stolen therefrom, particularly some gold seals, and a gold watch-key, and some rings.

In these circumstances, the petitioners were at a loss to know how to conduct themselves, in order still to get an examination of Smith, Brodie, and their associates, as there might be some difficulty in the matter, now that Smith and Brodie were indicted. However, as they are indicted for other crimes, the petitioners took the liberty of stating the matter in a memorial to his Majesty's Advocate, who is of opinion, that Smith, Brodie, and all others concerned, or suspected, might still be examined, with regard to the breaking
into

into the petitioners shop; and desired that the present application might be made to your Lordship for that purpose.

The petitioners are informed, that Smith, though indicted, is still willing to declare every fact and circumstance respecting this matter: They are also informed, that Brodie's watch, with some seals, are in the hands of Sir Sampson Wright, at London, and to be transmitted here. They, therefore, humbly trust, that proper orders will be given to preserve these articles entire; and that inspection of them will be given to the petitioners, that it may be known whether they are any of the articles stolen from their shop.

*May it therefore please your Lordship,
to take the declarations of the said
Smith, Brodie, Ainslie, and Brown,
and any other persons that may be
thought necessary, and condescended
on by the petitioners; and to give in-
formation*

formation to the petitioners when such examinations are to take place, that they, or their counsel, may attend, to put all pertinent questions to such as shall be examined respecting the breaking into the petitioners shop; and to give inspection of Mr Brodie's watch, seals, and other trinkets that may be along therewith, to the petitioners, so soon as they arrive.

According to Justice, &c.

(Signed) JOHN and ANDREW BRUCE.

July 25th 1788.

The desire of the petition was granted by the Sheriff on the 26th of July; and, on the 28th of that month, the Sheriff-substitute, with the Procurator Fiscal, and Mr Bruce, went to the prison to Smith; and the Sheriff-substitute informed him, he was come to take down his declaration respecting Mess. Bruces shop-breaking, but not with

with regard to any thing contained in his indictment ; and therefore hoped he would tell the truth... To which Smith answered, he had no objection to tell the whole truth ; he thought it a piece of justice to do so : That he had formerly declared all he knew concerning that matter before the Sheriff, but he believed it was not taken down *.

Smith was then examined, who declared, in substance, as follows :

That, in the month of November 1786, the declarant and Brodie had laid a plan to break into a hardware shop on Bridge-street, belonging to Davidson M'Kain : That they accordingly went there one night with a parcel of false keys and a small crow iron, and opened the door, by unlocking the padlock and lock thereof with the false keys ; after which they went and hid the
false

* See the conclusion of Joseph Mack's evidence, page 32.

false keys and crow iron, in case any of these articles should be found upon them, and then returned to the shop : That Smith was to go into the shop, and Brodie to watch at the outside of the door : That the declarant carried with him a dark lantern, which he lighted : That their intention was only to look at the goods, but not to carry them off that night : That the declarant remained in the shop for about half an hour ; and, after being some time there, Brodie called out, What made him stay so long, was he taking an inventory of the shop ? That the declarant only brought away with him that night seventeen steel watch chains, and a small red pocket-book. The steel chains the declarant afterwards sold along with some other goods of his own to an auctioneer, and the pocket-book he afterwards made a present of to Michael Henderson, stabler in Grass-market, his daughter : That the declarant and Brodie afterwards, in about a fortnight, went back to rob M'Kain's shop

K k

completely,

completely, and opened the door as formerly, when Smith went in, and left Brodie to watch without ; but he was not a few minutes in the shop, when he heard a person in the room immediately below rise out of his bed, and come towards the door ; on which the declarant pulled up the shop-door, and run straight into the street, without carrying any thing with him : That he found Brodie had fled ; and the declarant, on going up to the main street, found Brodie standing at the head of the entry into the Old Green Market : That, a little after this, the declarant and Brodie walked arm in arm down Bridge-street, in order to see what they could observe about the shop ; and, in passing down the street, they saw a man looking out at the door immediately under M'Kain's shop, and a guard soldier standing opposite, at the head of the stair which goes down to the Flesh-market ; so that the declarant and Brodie passed on along the Bridge, and afterwards went to their several homes, as nothing could be done

done further that night : That Brodie told the declarant, that the shop at the head of Bridge-street, belonging to Mess. Bruces, would be a very proper shop for breaking into, as it contained valuable goods, and he knew the lock would be easily opened, as it was a plain lock, *his men having lately altered that shop-door*, at the lowering of the streets : That the plan of breaking into this shop was accordingly concerted betwixt them, and they agreed to meet on the evening of the 24th of December 1786, being a Saturday, at the house of James Clark vintner in the head of the Flesh-market Close, where they generally met with other company to gamble : That, having met there, they played at the game of hazard, till the declarant lost all his money ; but at this time Brodie was in luck, and gaining money : That the declarant often asked Brodie to go with him on their own business ; but Brodie, as he was gaining money, declined going, and desired the declarant to stay a little, and he would go with him ;

him ;—the declarant, however, turned impatient, as it was near four in the morning, and the time for doing their business was going ; he therefore left the room, and went by himself to Mess. Bruces shop, when he opened the door with false keys, and, after getting in, lighted a dark lantern, and took out of the show-boxes or glassess on the counter, and from the inside of the windows, ten watches, five of them gold, three silver, and two metal, with the whole rings, locketts, and other jewellery and gold trinkets in the show-boxes, all which he put into two old black stockings, and carried them to the stable of Michael Henderson in the Grass-Market, where he hid them under some rubbish below the manger, and afterwards went home to his own room in the Grass-Market : That he staid there till near eight in the morning, and then went up to Mr Brodie's house, when the maid told him, that Mr Brodie was in bed ; and the declarant then left his name, and said he wanted to see him, and there-
after

after returned home to his own room: That, after staying there some time, Mr Brodie came and called for him, when the declarant told him what he had done, and desired Mr Brodie to stay there till he would go for the goods: That the declarant accordingly went to the stable, and brought the two black stockings, containing the goods, and poured them out upon a bed in a closet off his room, and then said to Mr Brodie, You see what luck I have been in; you might have been there; but as you did not go, you cannot expect a full share; but there are the goods, pick out what you choose for yourself; upon which Brodie took a gold seal, a gold watch-key set with garnet stones, and two gold rings; That the declarant and Brodie went twice over the goods, in order to ascertain their value; and the declarant, who was himself skilled in articles in that line, was of opinion they would have cost Mess. Bruce about L. 350 Sterling: That, after this, the goods were again put into the
black

black stockings, and carried back to Michael Henderson's stable : And, in the course of that day, being Sunday, the declarant and Brodie frequently passed Mess. Bruce's shop-door, to see in what situation the door stood, and to learn if the robbery had been discovered ; and nothing appearing, the declarant proposed to Brodie to go back that night, in order to sweep the shop clean ; but Brodie objected to this, saying, that a discovery might have been made, and a watch set to entrap them ; on which account they desisted from the attempt : That, after this, Brodie and the declarant had several meetings, consulting about the safest way to dispose of the goods ; and, upon the Tuesday evening, it was concerted between them, that the declarant should go off next day for England with the goods ; and at that time Brodie gave the declarant five guineas and a half to carry his expences on the road ; and, to evade suspicion, the declarant set out early next morning, and travelled on foot as far as Dunbar,

Dunbar, where he took the mail coach, and went to Chesterfield in England, and there sold the whole goods taken out of Mess. Bruces shop, except what Mr Brodie got, for L. 105 Sterling, to John Tasker, *alias* Murray, who, he knew, had been banished from Scotland : That the declarant sent a twenty-pound note of this money in a letter to Mr Brodie, informing him of the sale, and desiring him to pay himself what the declarant had borrowed, and supply his wife with money till the declarant's return : That the declarant staid for some weeks in England, during which time he had several letters from Brodie ; and, on his return, gave to Brodie three ten-pound notes more of the money to keep for him, and to prevent suspicion by the declarant's having so much money about him, which money Brodie gave him as he wanted it, but gained a great part of it at play : That, among the goods sold to Tasker, there was a particular gold watch, which Tasker said he would wear himself, and, to prevent a detection,

detection, got the name and number altered by a man at Leeds, and which watch Tasker was wearing when the declarant left England.

Mr Brodie was examined the same day, and being interrogated, declared, That he had been employed by the Magistrates of Edinburgh to alter the door of Mess. Bruce's shop, at the head of Bridge-street ; that his men altered it accordingly, after the streets had been lowered. And being interrogated, If he was at that time acquainted with George Smith, present prisoner in the tolbooth ? declares, That he does not at present remember at what time he became acquainted with Smith—But, as the declarant has other business of his own at present to take up his time, declines to give any further answer to this or any other question at present. Being further interrogated, If he recollects receiving from George Smith a gold seal, a gold watch-key, and two gold rings ?—he declines to answer this or any other

other question, for the reason above stated. And being desired to sign this declaration, he refused so to do.

Anne Hibutt, spouse to George Smith, was also examined, who declared, That one morning Brodie came to the room where her husband and she resided, and examined a parcel of jewellery goods ; and she saw Mr Brodie get the seal, watch-key, and rings, mentioned in her husband's declaration : That she saw Brodie give her husband some money the night before he went to England ; and, during her husband's absence, she received money from Mr Brodie.

Andrew Ainslie was examined, and declared as to the time of his becoming acquainted with Brodie and Smith : That he was at Glasgow at the time Mess. Bruce's shop was broke ; but, on his return to Edinburgh, was informed of the particulars by Smith : That he often saw, in Mr Brodie's possession, hanging at his watch, a

L 1

gold

gold seal and watch-key, which Brodie said, these, with some other trifles, were the only things he had got of what was taken out of Mess. Bruces shop; and has often heard Smith and Brodie quarrelling, and Brodie grumbling and complaining that he had never got his proper share of the goods taken out of that shop.

John Brown, alias Humphry Moore, declared as to the time he became acquainted with Smith and Brodie: The first time he saw Brodie was supping in Smith's house: That he was not come to Edinburgh when Mess. Bruces shop was broke: That he has often heard Smith and Brodie talking with regard to that shop-breaking, and Brodie's complaining that he had not got his proper share of the goods; and particularly, in a conversation betwixt Brodie and the declarant, after the shop of Inglis and Horner had been broke into, Brodie damned Smith for having broke into this last shop himself, and said he would treat him, Brodie,

die, in the same manner he had done as to Bruces shop, which was very ungenerous, after he had given him the information : That he had often had Brodie's gold watch in his custody, and saw the gold seal and watch-key hanging at it, which Brodie often said was the only things he had got that were taken from Bruces shop.

No. IV.

George Smith was taken into custody on Saturday morning the 8th of March, upon the information of John Brown, *alias* Humphry Moore. On Monday the 10th, remorse of conscience seized his mind, and he sent to the Sheriff, wishing to *make a clean breast*, and to *tell the truth* *. From that time he has all along been humble, penitent, and resigned.

At

* See his second declaration.

At his Trial, he intended to have pled Guilty, but was prevailed upon to take his chance of a trial. He meant to have asked for mercy, on the ground of making an ample confession of the crimes committed, and to be committed, and had prepared a speech in writing to that purpose, which he intended to have read.

By the means of a humane and benevolent Clergyman, who attended this unhappy man with the most feeling solicitude, and earnest discharge of duty, during his imprisonment, we have been favoured with this speech, and the catalogue of crimes which were to have been perpetrated; which will strike every reader with horror and amazement!

It is in his own hand-writing, and will be deemed curious by the Public.—It is remarkable, that Smith spells much better, in his writing, than Brodie.

My

* *My Lords, and Gentlemen of the Jury,*

‘ I stand before this Tribunal, so dreadful to the guilty mind, a victim, in the first instance, to private revenge. The principal informer * against me had suddenly become my mortal enemy, and thought of nothing, I fear, when he went to the Sheriff-clerk’s Office, but *my* single † ruin. I pray God to forgive him this cruel wrong, as I do from my heart.

‘ Since I was committed to prison, it has been said against me, that I was formerly a smith by occupation, and made the keys that opened the Excise Office, and other places ;

* John Brown, *alias* Humphry Moore.

† Brown did not mention Brodie on the first information he gave, nor indeed till he had returned from England, where he had gone in pursuit of the goods robbed from Inglis and Horner’s shop. It is supposed, by concealing Brodie, that he meant to have exacted money from him at his return, to keep his secret. But Brodie was gone, and he then spoke out.

' places ; neither of which are true. I
 ' never was a smith, nor ever made a key.
 ' Old keys were bought, and the wards of
 ' them altered ; but I was not by any
 ' means the best in the execution.

' It may be remembered against me, that
 ' I tried to break out of prison. But,
 ' not to dwell upon the love of life, and
 ' the dread of an ignominious execution,
 ' both of which are so natural and strong,
 ' I not only sincerely repented of having
 ' made the attempt, but, as a proof of my
 ' sincerity, and, I humbly trust, as some
 ' kind of atonement, I prevented Peter
 ' Young and three others from doing so,
 ' who, with myself, could afterwards have
 ' escaped from prison, by freely discovering
 ' the plot to the turnkey.

' I have, moreover, been falsely accused
 ' of advising my unfortunate wife not to
 ' *Speak at all* when she should be brought
 ' to this Court ; but I solemnly declare,
 ' that

' that the *worst* advice I ever gave her on
 ' that head, was to speak the truth. I have
 ' no fear of her evidence affecting my life.
 ' To make the wife the witness in law
 ' against the life of her husband, would be
 ' barbarous in any country. My great se-
 ' curity here is, that the justice and huma-
 ' nity of this country forbid it.

' It was my full confession on my first
 ' imprisonment, that has made my offences
 ' capital. I have destroyed myself, other-
 ' wise no evidence could have condemned
 ' me.

' I made that confession to prevent more
 ' dreadful mischief being done to this in-
 ' jured country from persons whom it *least*
 ' *suspected* ; for God, who seeth in secret,
 ' only knows where the evil would have
 ' stopped. And, if possible, to make some
 ' small reparation for the violent wrongs I
 ' have myself been guilty of, I request the
 ' indulgence of the Court to suffer me to
 ' read

‘ read over a list of such robberies as my
‘ accomplices and myself had determined
‘ to commit, had we not been timeously
‘ prevented.’

On . . .

1. On Dalglish and Dickie watchmakers.
2. On White and Mitchell lottery-office keepers.
3. On a rich baker near Brodie’s close,— the name forgot.
4. The Council Chamber, for the mace.
5. The Chamberlain’s Office, for money.
6. Forrester and Co.’s, jewellers.
7. Gilchrist and Co.’s, linen-drapers.

Besides these, and as depredations of greater magnitude,

8. The Bank of Scotland (or Old Bank) was to have been broke into.
9. The Stirling Stage Coach, carrying a thousand pounds to pay the Carron workmen, was to have been stopped and robbed.

10. Mr Latimer, collector of excise for the Dalkeith district, reported to have generally from one to two thousand pounds, was to have been robbed.

‘ I do not here speak of those felonies
‘ which are fet forth in my declarations,
‘ because some of them were made known
‘ by another.

‘ With all humility, therefore, and a
‘ trembling heart, I urge the plea of having
‘ been the true cause (whatever may seem,
‘ or may be endeavoured to be proved to
‘ the contrary) of this wicked and danger-
‘ ous confederacy being discovered and
‘ broken up, trusting my life to this one
‘ plea, and secure that it will have its full
‘ weight in the breasts of a discerning, un-
‘ biassed, and merciful Jury.

‘ My most thankful acknowledgments
‘ are humbly returned to your Lordships
‘ for the appointment of such able and
M m ‘ humane

' humane Counsel to plead for me. For-
' give me for declining their kind help.

' I have no warrant to be farther trouble-
' some. My guilty conscience, in place of
' every other accuser and distress, has
' brought me to confess crimes for which
' avenging justice will sentence me to die,
' and I deserve my doom. I throw myself
' entirely on the mercy of the Court.

' My Lords, to the charge brought against
' me in the Indictment, I PLEAD GUIL-
' TY *.'

* On the Friday before the Trial, Smith wrote a
letter to the Board of Excise, saying that he was not
to give them any trouble, for he would plead Guilty.

No.

No. V.

*An account of Mr Brodie's being seized at
Amsterdam.*

John Daly, an Irishman, residing at Ostend, had seen Brodie, who passed there under the name of John Dixon, at the house of one Bacon a vintner, with whom he lodged*.

Sir

* Brodie was recommended to Bacon at Ostend by the following letter from Captain Dent, in whose vessel he went to the Continent.

To Mr John Bacon, vintner, Ostend.

" Dear Friend,

" The bearer, Mr John Dixon, was going passenger with me to New York, but, being taken sick, had a desire to be landed at Ostend. Therefore,

Sir John Peter employed this Daly to go to Holland in pursuit of Brodie. He got notice of him at Amsterdam, by means of two Jews who attend the passengers that arrive in the treck schoots: He described Brodie to them, and a black trunk he had with him; and they, for a few stivers, shewed him the alehouse where he had taken up his quarters. Daly said Brodie was lodged in a first floor: That the landlord of the house informed him that the gentleman he inquired for was above: On this information, Daly went up stairs, knocked once or twice at the door, but no person answering, he opened the door, and went into the room. After searching about some time, he found Brodie in a
 fort

“ I recommend him to your care, being a country-
 “ man and a stranger; on my account, I hope you’ll
 “ render him every service in your power.—In so
 doing, you will oblige your most humble servant,

JOHN DENT.

fort of cupboard, and he addressed him, How do you do Captain John Dixon,—*alias* William Brodie,—come along with me. He then got him lodged in the Stadthouse. Daly came over to London, and got his reward.

Note. The above should have been inserted No. 1. of the Appendix, immediately preceeding Grove's Journal to Amsterdam, but it was not obtained in time to be put in the proper place.

No. VI.

William Brodie appears to have been a man of a most singular, and of a most unaccountable character. During his confinement, and from the time of his receiving

ing sentence till his execution, which was 34 days, he showed a mixture of character almost incredible. At times serious, and sensible of his situation; and the next moment displaying jocularly and humour; this disposition continued with him till almost the last moment of his existence. The hopes of obtaining a pardon, or an alteration of his sentence to transportation, seems strongly to have impressed his mind. In this view, he immediately occupied himself in writing letters, and many of them were sensible, forcible, and well written; in particular, one to the Duke of Buccleugh, requesting his interest to be sent to Botany Bay. Applications were also made to the Jury, to the Magistrates and Council, and many others, to second this view;—and it was natural and commendable in his friends to use every exertion in his favour. The examples, however, of a Lord Ferrers, a Dr Dod, the Perreaus, and Ryland the King's engraver, are convincing proofs that the laws are not to be infringed with impunity, and that justice is impartial.

The

The situation of criminals in the prison of Edinburgh, after condemnation, is, from unavoidable circumstances, peculiarly irksome. They are chained by one leg to a bar of iron, along-side of which they may walk ; and their bed is made by the side of it. Mr. Brodie was allowed a longer chain than usual, a table and chair, with pen, ink, and paper ; and the visits of any of his friends and acquaintances he wished to see, till the night before his execution, when none were permitted to visit him but clergymen.

To the same bar of iron on which he was chained, were, on this singular occasion, George Smith, and two men condemned for robbing the Dundee Bank. Brodie was offered a separate room, but declined it.

Smith was uniformly devout and penitent—relished the conversation of clergymen,

men, and joined fervently in religious exercises. Brodie said, upon some of these occasions, that he was so much employed with his temporal concerns, he could not attend to them ; but, when his business was finished, he would hear the clergymen. At times, however, he conversed with the clergy, and joined in their devotions. His conversation upon these occasions was directed to the principles of natural religion, not to the doctrines of revelation.

In the course of this Trial he appears to have been naturally mild tempered and humane ; but without principles of conduct, and easily led to crimes. He writes in his letters affectionately of his children.

On Friday before his execution, he was visited by his daughter *, a fine girl of about ten years of age. The feelings of the father gave strong proofs of his sensibility ;

† Cecil, whom he mentions in his letter, page 152

lity; he embraced her with emotion, and blessed her with affection.

On the Sunday preceding his execution, a respite of six weeks arrived for Falconer and Bruce, the two people condemned for robbing the Dundee Bank. The news made Brodie more serious for a little time than he had before been; and he expressed his satisfaction at the event.—Smith said, six weeks is but a *short* period. Brodie, with emotion, answered, George, *What would you and I give for six weeks longer? Six weeks would be an age to us!*

On Tuesday morning, the day before his execution, a gentleman, who was visiting him, occasionally remarked the fatal consequences of being connected with bad women, and in how many instances it had proved ruinous.—Yes, said Brodie,

'Tis woman that seduces all mankind, &c. *

—The gentleman reprov'd this levity; but he sung out the song.

N n

On

* Song in the Beggar's Opera.

On the Tuesday evening, the 30th of September, the Magistrates gave an order that none should be admitted to him but clergymen : A report having prevailed, that there was an intention of putting self-destruction in his power. But of this order he complained, and declared that if poison was placed on one hand, and a dagger at the other, he would refuse them both,—he would submit to the sentence of the laws of his country. Late in the evening he was suddenly agitated by hearing some noise ; and, turning to Smith, he said—George, Do you know what noise that is ? No, said Smith—Then I'll tell you, It is the drawing out of the fatal beam, on which you and I must suffer to-morrow ! —I know it well.

Soon after eleven, he went to bed, and slept till four in the morning, and continued in bed till near eight. At nine (Wednesday October 1.) he had his hair full dressed and powdered. Soon after,

a clergyman entered, and offered to pray with him. He desired it might be as short as possible.

At eleven o'clock he wrote the following letter to the Lord Provost, in a strong firm hand :

*Edinburgh, Tolbooth,
Oct. 1. 1788, Eleven o'clock.*

My Lord,

As none of my relations can stand being present at my dissolution, I humbly request that your Lordship will permit ————— to attend, it will be some consolation in my last hour ; and that your Lordship will please give orders that my body after be delivered to ————— and by no means to remain in goal * ; that
he

* Much anxiety was shewn that the body might not be detained in prison ; and after the Magistrates retired a vein was opened. It is said other means of recovery were used, after it was taken away, but the neck was found to be dislocated.

he and my friends may have it decently dressed and interred. This is the last favour and request of

Your most obedient

but most unfortunate,

(Signed) *Will. Brodie.*

About one o'clock he ate a beef-steak, and drank some port wine; and during this last repast he made some ludicrous remarks to Smith, &c.

At two o'clock the guard marched up, and surrounded the place of execution; and soon after the Captain on duty informed the Magistrates, in the Council Chamber that all was ready.

The Magistrates then put on their robes of office, with white gloves, and white staves, and followed by the clergymen in black gowns and bands, proceeded from the Council Chamber to the prison, attended by the proper officers.

The

The Magistrates reached the scaffold about ten minutes after two.

The criminals were soon after brought out;

Brodie, at the first view of the immense multitude of spectators, and the dreadful apparatus, said, This is awful!—On passing a gentleman he asked how he did, and said he was glad to see him.--The gentleman answered, he was sorry to see Mr Brodie in that situation. Brodie replied, *It is fortune de la guerre.*

Brodie had on a full suit of black, his hair dressed and powdered; Smith was dressed in white, with black trimming. They were assisted in their devotions by the Rev. Mr Hardie, one of the ministers of the city, the Rev. Mr Cleeve of the Episcopal, and Mr Hall of the Burgher persuasion. They spent some time in prayer with seeming fervency. Brodie knelt, laying

laying a handkerchief under his knees. He prayed by himself, nearly as follows :
 " O Lord, I acknowledge thee as the Great
 " Ruler of the world ; although I lament
 " much that I know so little of thee. This
 " much, however, I know, that thou art
 " a merciful God, and that, as I am a great
 " sinner, thou wilt have mercy upon me,
 " through the merits of thy Son Jesus
 " Christ ! O Lord, receive my soul ! Into
 " thy hands I resign it ! Amen."

When the devotions were over, the great bell began to toll, at half minute pauses, which had an awful and solemn effect. The criminals put on white caps, and Smith, whose behaviour was highly penitent and resigned, slowly ascended the platform*, raised a few feet above the scaffold, and placed immediately under the beam where the halters were fixed ; he was followed by Brodie, who mounted with alertness, and

* It is said Brodie tapped Smith on the shoulder, saying, Go up George, you are first in hand.

and examined the dreadful apparatus with attention, particularly the halter designed for himself, which he pulled with his hand. It was found that the halters had been too much shortened, and they were obliged to be taken down to alter. During this dreadful interval, Smith remained on the platform trembling, but Brodie stepped briskly down to the scaffold, took off his night-cap, and again entered into conversation with his friends, till the ropes were adjusted. He then sprung up again upon the platform, but the rope was still improperly placed, and he once more descended, shewing some little impatience, and observed, that the executioner was a bungling fellow, and ought to be punished for his stupidity—but that it did not much signify.—Having again ascended, he deliberately untied his cravat, buttoned up his waistcoat and coat, and helped the executioner to fix the rope; then pulling the night-cap over his face, he folded his arms, and placed himself in an attitude expressive of firmness and resolution.

lution. Smith, (who, during the interruption, had been in fervent devotion,) soon after the adjustment of the halter, let fall a handkerchief as a signal, and a few minutes before three the platform dropt, and they were launched into eternity * !

Thus ended the *Life* of William Brodie and of George Smith.

The crowd of spectators within the street, in view of the place of execution, it has been calculated, could not have been less than 40,000.

* Brodie neither confessed nor denied the crime for which he suffered. To a gentleman who visited him the day before his execution, he said, he thought it was hard to suffer for such a paltry sum, and appealing to Smith, he said, *George*, it was not more than L. 4. a-piece.—Smith answered, he did not think it was so much, but he, Brodie, should know, for he counted the money.

F I N I S.









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